Montana Legislative History

Chapter: 239 Session L: 1991
Bill Number: HB 356

Checklist of Bill History

History and Final Status Sheet	☒
Introduced Bill	☒
Fiscal Note	☐
Third Reading Bill	☒
Final Version of Bill	☒

House	**Senate**
Committee: Labor & Employment Relations	Committee: Labor & Employment Relations
Hearing Date(s): February 5, 1991	Hearing Date(s): March 7, 1991
Committee Report:	Committee Report:

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: FLR

Date: January 31, 2024

Notes: No Fiscal Note was found in the bill drafts. A Senate Standing Committee Report (dated March 14, 1991) recommending edits was included in the bill drafts.

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OF MONTANA

HISTORY AND FINAL STATUS

of Bills and Resolutions

of the

SENATE

and

HOUSE OF REPRESENTATIVES

of the State of Montana

FIFTY-SECOND

LEGISLATURE

REGULAR SESSION
January 7, 1991 to April 29, 1991

JOSEPH P. MAZUREK
President of the Senate

DAVID L. HUNTER
Secretary of the Senate

HAL HARPER
Speaker of the House

JOYCE ANDRUS
Chief Clerk of the House

4/19	SIGNED BY SPEAKER		
4/20	SIGNED BY PRESIDENT		
4/20	TRANSMITTED TO GOVERNOR		
4/24	RETURNED TO HOUSE WITH GOVERNOR'S AMENDMENTS		
4/25	2ND READING GOVERNOR'S AMENDMENTS NOT CONCURRED	66	31
	TRANSMITTED TO SENATE		
4/25	2ND READING GOVERNOR'S AMENDMENTS NOT CONCURRED	27	21
	RETURNED TO HOUSE		
4/29	TRANSMITTED TO GOVERNOR FOR RECONSIDERATION		
5/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 733 EFFECTIVE DATE: 7/01/91		

HB 355 INTRODUCED BY O'KEEFE, ET AL.
INCREASE MANDATORY INSURANCE FOR DRUG/ALCOHOL ADDICTION; MENTAL ILLNESS

1/22	INTRODUCED		
1/22	REFERRED TO HUMAN SERVICES & AGING		
1/23	FIRST READING		
1/23	FISCAL NOTE REQUESTED		
1/28	FISCAL NOTE RECEIVED		
1/29	FISCAL NOTE PRINTED		
1/30	HEARING		
2/06	TABLED IN COMMITTEE		
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/26	2ND READING DO PASS AS AMENDED FAILED	34	66

HB 356 INTRODUCED BY G. BECK, ET AL.
REQUIRE APPOINTMENT OF CERTAIN MEMBERS TO BOARD OF PERSONNEL APPEALS

1/22	INTRODUCED		
1/22	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/23	FIRST READING		
2/05	HEARING		
2/06	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	2ND READING PASSED	82	11
2/11	3RD READING PASSED	88	12
	TRANSMITTED TO SENATE		
2/12	FIRST READING		
2/12	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/07	HEARING		
3/14	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/16	2ND READING CONCURRED	26	21
3/18	3RD READING CONCURRED	34	15
	RETURNED TO HOUSE WITH AMENDMENTS		
3/21	2ND READING AMENDMENTS CONCURRED	84	6
3/23	3RD READING AMENDMENTS CONCURRED	85	14
3/27	SIGNED BY SPEAKER		
3/27	SIGNED BY PRESIDENT		
3/27	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 239 EFFECTIVE DATE: 10/01/91		

HB 357 INTRODUCED BY THOMAS, ET AL.
AMEND CONSTITUTION TO PROVIDE SPLIT SESSIONS WITH LIMITS

1/22	INTRODUCED
1/22	REFERRED TO STATE ADMINISTRATION
1/23	FIRST READING

LAWS AND RESOLUTIONS

OF THE

STATE OF MONTANA

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OF MONTANA

ENACTED BY THE

Fifty-Second Legislature
In Regular Session

and the

Fifty-First Legislature
In Special Session

Held at Helena, the Seat of Government
January 7, 1991 to April 29, 1991
May 1990

Published by

Montana Legislative Council

Room 138
State Capitol
Helena, Montana 59620

Robert B. Person
Executive Director

Printed and Bound by
Eastwood Printing
2901 Blake Street
Denver, CO 80205

CHAPTER NO. 239

[HB 356]

AN ACT TO REQUIRE APPOINTMENT TO THE BOARD OF PERSONNEL APPEALS OF TWO PERSONS WHO ARE FULL-TIME EMPLOYEES OR ELECTED OFFICIALS OF A LABOR UNION OR AN ASSOCIATION RECOGNIZED BY THE BOARD; TO REQUIRE APPOINTMENT OF TWO FULL-TIME MANAGEMENT EMPLOYEES TO THE BOARD OF PERSONNEL APPEALS; AMENDING SECTION 2-15-1705, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1705, MCA, is amended to read:

"**2-15-1705. Board of personnel appeals — allocation — composition — vote necessary for decision — quasi-judicial.** (1) There is a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(3) (a) The board consists of five members appointed by the governor as follows:

(i) two members~~, each having management experience involving collective bargaining~~ *who are full-time management employees in organizations with collective bargaining units or who represent management in collective bargaining activities;*

(ii) two members~~, each having experience as a member or employee of an employee organization~~ *who are full-time employees or elected officials of a labor union or an association recognized by the board;* and

(iii) one other member having general labor-management experience, who shall be the chairperson.

(b) All members of the board shall serve as impartial decisionmakers and are not appointed to serve the interests ~~represented by their experience~~ *of the organizations they represent.*

(4) When the chairperson is unable to participate in a proceeding before the board, the remaining members of the board shall select an individual, who shall be a person who qualifies under subsection (3)(a)(iii), to serve in the place of the chairperson in that proceeding and he shall participate in the decision in that proceeding. There shall be only one additional chairperson replacement appointed and serving at any one time. The individual selected is entitled to the same compensation and per diem that members of the board receive.

(5) In all proceedings before the board, a favorable vote of at least a majority of a quorum is sufficient to adopt any resolution, motion, or other decision.

(6) The board is designated a quasi-judicial board for purposes of 2-15-124."

Section 2. **Applicability.** [This act] applies to members appointed after [the effective date of this act].

Approved March 29, 1991.

CHAPTER NO. 240

[HB 379]

AN ACT PROVIDING FOR GOOD TIME CREDIT FOR PERSONS ON PAROLE; AMENDING SECTION 53-30-105, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-30-105, MCA, is amended to read:

"**53-30-105. Good time allowance.** (1) The department of institutions shall adopt rules providing for the granting of good time allowance for inmates employed in any prison work or activity. The good time allowance shall operate as a credit on his sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules made by the department or the warden. The rules adopted by the department may not grant good time allowance to exceed:

(a) 10 days per month for inmates assigned to maximum, close, and medium I security classifications;

(b) 13 days per month for those classified as medium II and minimum security classifications;

(c) 15 days per month for inmates after having been assigned as medium II or minimum security for an uninterrupted period of 1 year;

(d) 13 days per month for those inmates enrolled in school who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole;

(e) 3 days per month for those inmates participating in self-improvement activities designated by the department.

(2) In the event of an attempted escape by an inmate or a violation of the rules prescribed by the department or warden, the inmate may be punished by the forfeiture of part or all good time allowances. The warden

HOUSE BILL NO. 356

INTRODUCED BY G. BECK, DOLEZAL, DRISCOLL, SOUTHWORTH, MADISON, MCCULLOCH, GALVIN

IN THE HOUSE

JANUARY 22, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
JANUARY 23, 1991	FIRST READING.
FEBRUARY 6, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 7, 1991	PRINTING REPORT.
FEBRUARY 8, 1991	SECOND READING, DO PASS.
FEBRUARY 9, 1991	ENGROSSING REPORT.
FEBRUARY 11, 1991	THIRD READING, PASSED. AYES, 88; NOES, 12.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 12, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
MARCH 14, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 16, 1991	SECOND READING, CONCURRED IN.
MARCH 18, 1991	THIRD READING, CONCURRED IN. AYES, 34; NOES, 15.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 21, 1991	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.

MARCH 23, 1991

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. 356

INTRODUCED BY Gary Beck Delegate Darrell Smith Bartlett Madison McCulloch Galvin

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE APPOINTMENT TO THE BOARD OF PERSONNEL APPEALS OF TWO PERSONS WHO ARE FULL-TIME EMPLOYEES OR FULL-TIME ELECTED OFFICIALS OF A LABOR UNION OR AN ASSOCIATION RECOGNIZED BY THE BOARD; AMENDING SECTION 2-15-1705, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-1705, MCA, is amended to read:

"**2-15-1705. Board of personnel appeals -- allocation -- composition -- vote necessary for decision -- quasi-judicial.** (1) There is a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in 2-15-121.

(3) (a) The board consists of five members appointed by the governor as follows:

(i) two members, each having management experience involving collective bargaining;

(ii) two members~~,--each--having--experience--as--a--member--or employee--of--an--employee--organization~~ who are full-time employees or full-time elected officials of a labor union or an association recognized by the board; and

(iii) one other member having general labor-management experience, who shall be the chairperson.

(b) All members of the board shall serve as impartial decisionmakers and are not appointed to serve the interests represented by their experience.

(4) When the chairperson is unable to participate in a proceeding before the board, the remaining members of the board shall select an individual, who shall be a person who qualifies under subsection (3)(a)(iii), to serve in the place of the chairperson in that proceeding and he shall participate in the decision in that proceeding. There shall be only one additional chairperson replacement appointed and serving at any one time. The individual selected is entitled to the same compensation and per diem that members of the board receive.

(5) In all proceedings before the board, a favorable vote of at least a majority of a quorum is sufficient to adopt any resolution, motion, or other decision.

(6) The board is designated a quasi-judicial board for purposes of 2-15-124."

NEW SECTION. **Section 2. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to members appointed after January 1, 1989.

-End-

INTRODUCED BILL
HB 356

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

HOUSE BILL NO. 356

INTRODUCED BY G. BECK, DOLEZAL, DRISCOLL, SOUTHWORTH, MADISON, MCCULLOCH, GALVIN

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE APPOINTMENT TO THE BOARD OF PERSONNEL APPEALS OF TWO PERSONS WHO ARE FULL-TIME EMPLOYEES OR ~~FULL-TIME~~ ELECTED OFFICIALS OF A LABOR UNION OR AN ASSOCIATION RECOGNIZED BY THE BOARD; AMENDING SECTION 2-15-1705, MCA; AND PROVIDING ~~A RETROACTIVE~~ AN APPLICABILITY DATE."

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(6) The board is designated a quasi-judicial board for purposes of 2-15-124."

NEW SECTION. **Section 2.** ~~Retroactive applicability~~ APPLICABILITY. [This act] applies ~~retroactively, within the meaning of 1-2-109,~~ to members appointed after ~~January 1,~~

~~1989~~ [THE EFFECTIVE DATE OF THIS ACT].

-End-

HOUSE BILL NO. 356

INTRODUCED BY G. BECK, DOLEZAL, DRISCOLL, SOUTHWORTH, MADISON, MCCULLOCH, GALVIN

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE APPOINTMENT TO THE BOARD OF PERSONNEL APPEALS OF TWO PERSONS WHO ARE FULL-TIME EMPLOYEES OR ~~PART-TIME~~ ELECTED OFFICIALS OF A LABOR UNION OR AN ASSOCIATION RECOGNIZED BY THE BOARD; AMENDING SECTION 2-15-1705, MCA; AND PROVIDING ~~A RETROACTIVE~~ AN APPLICABILITY DATE."

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(i) two members, ~~each having experience as a member or employee of an employee organization~~ who are full-time employees or ~~full-time~~ elected officials of a labor union or an association recognized by the board; and

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~~1989~~ [THE EFFECTIVE DATE OF THIS ACT].

-End-

SENATE STANDING COMMITTEE REPORT

March 14, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration House Bill No. 356 (third reading copy -- blue), respectfully report that House Bill No. 356 be amended and as so amended be concurred in:

1. Title, line 8.
Following: "BOARD;"
Insert: "TO REQUIRE APPOINTMENT OF TWO FULL-TIME MANAGEMENT EMPLOYEES TO THE BOARD OF PERSONNEL APPEALS;"

2. Page 1, lines 22 and 23.
Following: "members" on line 22
Strike: remainder of line 22 through "bargaining" on line 23
Insert: "who are full-time management employees in organizations with collective bargaining units or who represent management in collective bargaining activities"

3. Page 2, line 7.
Strike: "represented by their experience"
Insert: "of the organizations they represent"

Signed: Thomas E. Towe
Thomas E. Towe, Vice-Chairman

LB 3/14/91
Amd. Coord.

SB 3-14-91 12:35
Sec. of Senate

SENATE
HB 356

HOUSE BILL NO. 356

INTRODUCED BY G. BECK, DOLEZAL, DRISCOLL, SOUTHWORTH, MADISON, MCCULLOCH, GALVIN

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE APPOINTMENT TO THE BOARD OF PERSONNEL APPEALS OF TWO PERSONS WHO ARE FULL-TIME EMPLOYEES OR ~~PUBLIC-TIME~~ ELECTED OFFICIALS OF A LABOR UNION OR AN ASSOCIATION RECOGNIZED BY THE BOARD; TO REQUIRE APPOINTMENT OF TWO FULL-TIME MANAGEMENT EMPLOYEES TO THE BOARD OF PERSONNEL APPEALS; AMENDING SECTION 2-15-1705, MCA; AND PROVIDING A ~~RETROACTIVE~~ AN APPLICABILITY DATE."

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(3) (a) The board consists of five members appointed by the governor as follows:

(i) two members~~,--each--having--management--experience involving-collective-bargaining~~ WHO ARE FULL-TIME MANAGEMENT EMPLOYEES IN ORGANIZATIONS WITH COLLECTIVE BARGAINING UNITS OR WHO REPRESENT MANAGEMENT IN COLLECTIVE BARGAINING ACTIVITIES;

(ii) two members~~,--each having-experience-as-a-member--or employee--of--an--employee--organization~~ who are full-time employees or ~~full-time~~ elected officials of a labor union or an association recognized by the board; and

(iii) one other member having general labor-management experience, who shall be the chairperson.

(b) All members of the board shall serve as impartial decisionmakers and are not appointed to serve the interests ~~represented--by--their--experience~~ OF THE ORGANIZATIONS THEY REPRESENT.

(4) When the chairperson is unable to participate in a proceeding before the board, the remaining members of the board shall select an individual, who shall be a person who qualifies under subsection (3)(a)(iii), to serve in the place of the chairperson in that proceeding and he shall participate in the decision in that proceeding. There shall be only one additional chairperson replacement appointed and serving at any one time. The individual selected is entitled to the same compensation and per diem that members of the board receive.

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(6) The board is designated a quasi-judicial board for purposes of 2-15-124."

NEW SECTION. **Section 2.** ~~Retroactive applicability~~ APPLICABILITY. {This act} applies ~~retroactively, within the meaning of 1-2-109,~~ to members appointed after ~~January 1, 1989~~ [THE EFFECTIVE DATE OF THIS ACT].

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIR CAROLYN SQUIRES**, on February 5, 1991, at 3:00 p.m.

ROLL CALL

Members Present:

Carolyn Squires, Chair (D)
Tom Kilpatrick, Vice-Chairman (D)
Gary Beck (D)
Steve Benedict (R)
Vicki Cocchiarella (D)
Ed Dolezal (D)
Jerry Driscoll (D)
Russell Fagg (R)
H.S. "Sonny" Hanson (R)
David Hoffman (R)
Royal Johnson (R)
Thomas Lee (R)
Mark O'Keefe (D)
Bob Pavlovich (D)
Jim Southworth (D)
Fred Thomas (R)
Dave Wanzenried (D)
Tim Whalen (D)

Staff Present: Eddye McClure, Legislative Council
Jennifer Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HOUSE JOINT RESOLUTION
to
RESTORE MONTANA'S DISLOCATED WORKER FUNDS

Motion/Vote: REP. DRISCOLL MOVED HOUSE JOINT RESOLUTION TO RESTORE MONTANA'S DISLOCATED WORKER FUNDS BE INTRODUCED AND SPONSORED BY THE COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS. EXHIBIT 1. Motion carried unanimously.

HEARING ON HB 356

Presentation and Opening Statement by Sponsor:

REP. GARY BECK, House District 48, said HB 356 is an act to require appointment, to the Board of Personnel Appeals, of two

persons who are full-time employees or full-time elected officials of a labor union or an association recognized by the Board.

Proponents' Testimony:

Gene Fenderson, Montana State Buildings and Construction Trades Unions, stated the Board of Personnel Appeals is a neutral party that stands before both management and labor. The Board should be as impartial as possible. In the last few years, people appointed as employee representatives to the Board sometimes lacked the experience or the fair judgment. This bill will equalize what the law originally intended, which was to have strong advocates on both sides. All members should have the same qualifications and there is one neutral member. The Building Trades Union wouldn't object to an elected official instead of a full-time elected official.

Phil Campbell, Montana Education Association (MEA), proposed removing "full-time" before "elected" on Pg. 1, Ln. 25. In MEA, most elected officials are not full-time. The President of MEA and a local president in Billings are the only two full-time employees. Currently, the differences in requirements for management representatives are to have management experience in collective bargaining and labor representatives are to have experience as being a member. This type of politics causes shenanigans. For example, in the most recent appointment to represent labor on the Board, the person fit the qualifications under the bill as member, but the person was a retired kindergarten teacher with no collective bargaining experience. It is a disservice to the Board and to all laborers. Being a member of a union is not enough. This bill will assure that people appointed will have experience in the collective bargaining process and labor law.

Don Judge, Executive Secretary, AFL-CIO, presented written testimony. **EXHIBIT 2.** HB 356 bill not only affects the public sector but the private sector in terms of the wage claims. A few years ago the Board of Personnel Appeals was given the responsibility of private sector wage claim work. The law was to resolve disputes between public sector employees and employers and play a key role in collective bargaining, so there would be a stable relationship. When the Board is allowed to take one side or the other, without adequate debate and discussion internally, there is instability in the collective bargaining process.

Tom Schneider, Montana Public Employees Association, stated his support of HB 356 with the amendment.

Opponents' Testimony:

Mike Micone, Commissioner, Department of Labor and Industry, stated the Board of Personnel Appeals is administratively attached to the Department of Labor and Industry, and the

Employment Relations provides the administrative support to the Board. The Board is a quasi-judicial board that hears appeals arising from decisions that are made within the Legal Services Division. The hearings and appeals that go before Board of Personnel Appeals deal with collective bargaining agreements, unfair labor practices, collective bargaining for nurses, wage and hour violations, etc. The Board has consistently voted almost unanimously on every occasion upholding the actions of the hearing officer of the Department. The consistent voting pattern hasn't changed over the years. Board members are statutorily obligated to be impartial decision makers. The Board hears appeals following an impartial hearings officer. This bill is narrowing the decision-making authority of the Governor. The provision in the bill to make it retroactive to January, 1989, will reflect on decisions by the Department. There is a possibility that members that currently serve on the Board would be removed, and the Department may have to go back and hear many cases.

Questions From Committee Members:

REP. FAGG asked **REP. BECK** what was the reason for the retroactive applicability date. **REP. BECK** said in the statute, if the date wasn't included it wouldn't exist, so January 1, 1989, was included. **REP. FAGG** said there might be a due process problem with previous cases or possibly removing someone from the Board. Would there be a problem making it effective on passage and approval. **REP. BECK** said it could be worked out.

REP. WANZENRIED said he talked with **Ms. Eddye McClure, LC Attorney,** and referred the previous question to her. **Ms. McClure** said that in drafting the bill the Department of Labor stated two members were appointed to the Board on January 1, 1989. It is a standard procedure when drafting bills relating to boards with staggered terms, to place a retroactive applicability date on them to affect persons appointed at particular times. When this bill was drafted, the appointment date given to the Council by the Department for the two labor appointees was January 1, 1989. Therefore, the bill was drafted to apply to anyone on the Board appointed after January 1, 1989. Since no other appointee's criteria of appointment was changed, the bill would not affect past or future appointees, other than the two labor appointees changed. The next appointment would have to follow these qualifications.

REP. FAGG asked **Ms. McClure** if there would be a reason for the retroactive applicability day if it would not take place until the time the next people were appointed. **Ms. McClure** said the intention of the retroactive applicability date was to go back and pick up two particular labor appointees. The Board has staggered appointments. According to the Department at the time of the drafting January 1, 1989, was when the two particular positions were appointed and the bill takes effect from that point, meaning those two particular people cannot be re-appointed

nor can any other new labor people be appointed using the old criteria. If the Department's date of January 1 for appointment of the labor people was correct, there was no problem. However, the two labor people that the bill affects were appointed January 2, not January 1, 1989. Because of that information, the "after January 1" date would affect the two appointed January 2. It could be solved by amending the bill to change January 1 to January 2.

REP. JOHNSON asked **Mr. Micone** how he would answer **REP. FAGG'S** question. **Mr. Micone** said the retroactive date goes back to the members appointed in January, 1989, and would immediately affect those individuals when they could not finish out their term.

REP. DRISCOLL asked **Ms. McClure** if it would be the same if the law applies to people appointed after passage and approval of this act. **Ms. McClure** said yes. Since people are confused about how retroactive applicability dates work, it would be less confusing to say that it applies to persons appointed after the "effective date of this act."

Closing by Sponsor:

REP. BECK stated the bill was fair and impartial. The Governor would still have the same authority. There's five people on the Board and three of them are directly influenced by the appointment of the Governor.

HEARING ON HB 305

Presentation and Opening Statement by Sponsor:

REP. JIM RICE, House District 3, Helena, sponsored HB 305 on behalf of the Department of Labor and presented amendments. **EXHIBIT 3.** The Department is currently holding many hearings by telephone, instead of having people drive to the hearing location. This bill is to clarify the authority of the Department to do this.

Proponents' Testimony:

William O'Leary, Chief Legal Counsel, Department of Labor and Industry, stated support for HB 305. **EXHIBIT 4**

George Wood, Executive Secretary, Montana Self Insurers Association, referred to the amendment that removes Sections 5 and 6, which pertains to the Workers' Compensation Act and the Occupational Disease Act. There should be adequate records of these hearings. It's difficult for a tape to pick up exact words. If two people are talking, it's difficult to say who's doing the questioning or answering. A user tax pays for the cost of the Workers' Compensation and Occupational Disease sections. His association is willing to assume the additional cost if there is one. The Supreme Court would not accept a taped record as the

primary record in a disputed case. Occupation Disease hearings take longer because there are usually many witnesses and a great deal of money involved.

Opponents' Testimony:

Tim Rearden, Workers' Compensation Judge, stated he opposed the bill but wanted to provide the Committee a perspective of the person listening to the tapes and referred to Workers' Compensation cases only. In 1987 and 1989 the Legislature expanded the authority of the Department of Labor to hear these cases. The Department is the first level hearing for all cases on whether the statute of limitations should be extended beyond the twelve-month period, it hears all occupational disease claims, it makes decisions regarding the uninsured employers fund, segregation allocations, rehabilitation benefits etc. These cases involve tremendous amounts of money. Unemployment Insurance (UI) has to have hearings held and completed within a certain time period, but Workers' Compensation cases do not. Tape recordings have many sections where the testimony is inaudible, or there may be nothing recorded on the tape. The records of court reporters are substantially better. It's difficult to understand four or five people talking at once on the telephone. In the courtroom the court reporter would stop the proceedings. It creates a very inadequate and poor record to review. There are some due process concerns in terms of an effective cross examination of a witness who may be 300 miles away. The face to face approach makes it is easier to judge credibility.

Phil Campbell, Montana Education Association, proposed the following amendment: after "the hearings may be conducted by telephone" insert "by mutual consent of the parties." There are times when a telephone hearing would be appropriate if it is not a complicated case and the parties agree. With the amendment, he stated support for the bill.

Don Judge, Executive Secretary, AFL-CIO, stated there must be three protections: 1. The parties must agree to the hearings before they are conducted by telephone. 2. Tapes should be provided to people who can satisfy the Department that they can't afford to pay for copies of the transcripts. 3. Provisions must be made so workers do not have to cover the cost if the tape was inaudible.

Questions From Committee Members:

REP. PAVLOVICH asked **REP. RICE** if he agreed with the amendments. **REP. RICE** said he had seen them and referred the question to **Mr. O'Leary. Mr. O'Leary** said that if Sections 5 and 6 were deleted there would remain a question of whether there is an obligation to hold hearings with a court reporter being present. The time element and fiscal impact would create problems. There are many aspects of Workers' Compensation that are routinely heard and the tape recordings submitted are adequate for the review. It is

hard to distinguish which hearings are going up for appeal.

REP. WHALEN asked **Mr. O'Leary** how many UI claims are appealed to the District Court each year. **Mr. O'Leary** said he didn't know. **REP. WHALEN** asked if he was aware that a District Court will not review a UI case unless there is a transcribed written record, and the Court won't review a tape. **Mr. O'Leary** said District Courts will review tapes, whether it is applicable to UI he didn't know. **REP. WHALEN** said there is a Supreme Court decision that specifically says they will not review a UI case absent a transcribed record.

REP. DRISCOLL said the Workers' Compensation telephone hearings are done on certain issues. He asked **Mr. O'Leary** if the bill was trying to get the injured worker to pay for the transcript, or if there was a problem with the telephone hearings being legal. **Mr. O'Leary** said it has never been decided in the State of Montana if there are some constitutional problems with telephone hearings. There isn't a budget to develop transcripts and provide them to the court. It was because of a Yellowstone County District Court order that this bill came about. The individual appealing the decision would have to assume the cost of the appeal. **REP. DRISCOLL** asked if there was a half-an-hour hearing on the telephone on a UI case, how much would the transcript cost if the Court wanted one. **Mr. O'Leary** said he didn't know. The Department looks at 1,500 of them a year. **REP. DRISCOLL** said, "you don't know how much they cost, you just want the worker to pay it." **Mr. O'Leary** said it wouldn't necessarily be the worker that would pay for it. It may be an employer if the appeal was made by him.

REP. WANZENRIED asked **Mr. O'Leary** what problem was being solved by this bill. **Mr. O'Leary** said the Department wants authorization to conduct telephone hearings because of the work load, and if transcripts are required, the appealing party is to pay the cost. **REP. WANZENRIED** said Pg. 1 of the fiscal note says the number of transcripts provided by the Department would remain unchanged. A flat rate of $196 is charged per issue. Doesn't the Department already have the authority to charge if it is being done now? **Mr. O'Leary** said he didn't agree with the basis of the computation. **REP. WANZENRIED** asked if this bill will provide the authority to conduct the telephone hearings. **Mr. O'Leary** said yes. **REP. WANZENRIED** said even though there is general authority, specific authority is needed to conduct the interviews. **Mr. O'Leary** said the Courts are complaining about receiving tapes which predominantly result from telephonic hearings. The Department looks upon the comments of the Courts as a direct threat on the ability to conduct telephone hearings and to have the tape record available on appeal. If there is an appeal, the appealing party would be obligated to reduce the taped hearing to a record. If a District Court or the Workers' Compensation Court said they were not going to listen to any more taped phone calls, there would be a big problem.

REP. BECK asked **Mr. O'Leary** if the Department is conducting and taping telephone interviews, what procedure insures the quality of the tape or to keep people from talking at once. **Mr. O'Leary** said a year ago when the Department got the Workers' Compensation cases, it obtained state-of-the-art telephone equipment. The Department hadn't had the type of criticisms from the Courts as Judge Rearden talked about.

REP. DRISCOLL asked **Mr. O'Leary** if UI appeals are already done by phone if both parties agree to it, will that change if this bill does not pass. **Mr. O'Leary** said a pre-conference is held and issues are resolved, and the parties are informed that there will be a telephone conference. At that time their permission is not sought. **REP. DRISCOLL** said he received a letter that said to come to Helena or he would be called. **Mr. O'Leary** said he was given an option.

CHAIR SQUIRES asked **Judge Rearden** if he opposed the bill with the amendments. **Judge Rearden** said he didn't fully oppose the bill but opposed bad tapes and transcripts. Removing Workers' Compensation eliminates the problem because they have a high percentage of appeals.

Closing by Sponsor:

REP. RICE stated that $6 million could be lost if UI hearings are not completed under certain time schedules. The only way the Department of Labor can meet the federal mandates is to have the hearings telephonically. Presently, the meetings are being held by telephone, but there is no specific authority given under the law. If the amendments are adopted to strike Workers' Compensation, the Department will be forced to have court reporters and transcripts at every Workers' Compensation hearing. That will have a big impact on the Department's budget.

HEARING ON HB 336

Presentation and Opening Statement by Sponsor:

REP. RICHARD SIMPKINS, House District 39, Great Falls, said HB 336 is the collection of wages in a labor dispute between an employer and an employee. Presently, the law permits the Department of Labor to levy a penalty against the employer at 5 percent per day, not to exceed 20 days, which is 100 percent. This can be a hinderance in settling a negotiated claim. If the employee waits, he could get the 100 percent penalty because the penalty used to be given to the employee. The state would receive no compensation for the negotiation phase of the process. This bill would give a different type of compensation to the employee and compensate the state for having to intervene in obtaining the back wages. It would provide a better incentive for a rapid settlement between the employee and employer. The Department would collect the 5 percent penalty per day if it chooses to do so. He presented amendments. **EXHIBIT 5**

Ms. McClure stated a correction to the amendments. The third amendment should say "Page 5" instead of "Page 3."

Proponents' Testimony:

Mike Micone, Commissioner, Department of Labor and Industry, presented written testimony. **EXHIBIT 6**

Opponents' Testimony:

Don Judge, Executive Secretary, AFL-CIO, presented written testimony. **EXHIBIT 7**

Phil Campbell, Montana Education Association, stated opposition. If the Department needs money, it should amend the bill to recover attorney fees which are allowed under other sections of the law. If an employee has a wage claim, he can go to court and receive the penalty and attorney fees. The penalties help settle the claims instead of prolonging them.

Gene Fenderson, Montana State Building and Construction Trades Union, stated he agreed with the testimony just given. The penalties should be tripled instead of doubled.

Questions From Committee Members:

REP. HOFFMAN asked **Ms. McClure,** in reference to the ability of the Department to take a default judgment, does the party against whom the default is taken have a remedy in the event of excusable neglect. **Ms. McClure** said she didn't know, but the Department may know.

REP. THOMAS asked **Mr. Judge** if he would change his position on the bill if the proposed amendment would allow interest to be charged on the back wages due. **Mr. Judge** said if the interest would be given to the Department and the penalty would be given to the employees, that would be okay. There would be additional income. The employee who has waited for 20 days would be entitled under current law to 100 percent of the lost wages. If the bill is adopted with the amendments, the employee would only be entitled to the New York prime interest plus 2 percent, which would be a smaller amount of money. That wouldn't change the major objection. **REP. THOMAS** asked if he would want the penalty to go to the employee as it is now. **Mr. Judge** said yes. **REP. THOMAS** asked if he would want the interest to go to the Department. **Mr. Judge** said he didn't have an objection to the Department collecting the interest; he was just defending what the employee has coming to him now.

REP. DRISCOLL asked **Mr. Micone** how many times the penalty was collected at 100 percent. **Mr. Micone** said that the law mandates to charge 5 percent per day. In every instance a case will go longer than 20 days, so the 100 percent penalty is collected in every occasion. The Department does collect the penalty; the law

mandates it.

Closing by Sponsor:

REP. SIMPKINS stated previous testimony said that almost every case exceeds 20 days. Up to 20 days is fine, but beyond 20 days there is no incentive to settle the case. Under this proposal, the employer pays the employee the percentage, and he has to pay the penalty to the Department. There would be an ongoing percentage being charged against those wages until the case was settled. The whole purpose of this bill is to get the money due the employee as soon as possible. Beyond 20 days the law doesn't have any bargaining power. The employee would be given compensation at a rate higher than most people can earn on their money. In addition, he stated to **Ms. McClure** where it says, "the rate may not exceed" the word "annualized" may need to be inserted.

CHAIR SQUIRES asked **Mr. Micone** to clarify the technical note in the fiscal note Section 4, Subsections 3 and 4, referring to the payroll taxes due to the Department of Labor. As of July 1, 1991, the employer payroll tax would be collected by the Department of Revenue. **Mr. Micone** said it refers to the payroll tax to pay out the unfunded liability in Workers' Compensation. That function had been transferred to the Department of Revenue effective January 1, 1992.

Ms. McClure asked **Mr. Micone** if it should say payroll taxes due to the Department of Revenue instead of Department of Labor in Subsections 3 and 4. **Mr. Micone** said yes.

HEARING ON HB 342

Presentation and Opening Statement by Sponsor:

REP. WANZENRIED, House District 7, Kalispell, stated that HB 342 deals with the construction trade industry, home building, and independent contractors. It would remove the exemptions that members of the Home Building Construction Industry are currently entitled to qualify for an exemption from coverage under Workers' Compensation. It would require anybody involved in the industry to carry Workers' Compensation coverage. Page 3 lists the occupations that would be required to carry Workers' Compensation coverage. These occupations are the most hazardous in the Workers' Compensation field. The independent contractor status that is allotted to any occupation complicates Workers' Compensation. Under current law, an independent contractor is a person engaged as an independently established trade, occupation, profession, or business. The independent contractor has been and will continue to be free of control or direction over the performance of the services under the contract. In the absence of a contract, the degree of control is the important variable. For example, a home builder may serve as a general contractor and subcontracts the work out. As soon as there is an injury, that

person or firm will argue that he is an employee of the home builder or the general contractor. Aside from what the law says an independent contractor is, in performing the services an independent contractor is assumed to be an employee. Home construction would remain competitive in Montana and home owners would get the most service for their dollar. An amendment on Page 8 strikes existing language and carries to Page 9 pertaining to cosmetologists and barbers. This bill has no effect on current law.

Proponents' Testimony:

Don Chance, Montana Building Industry Association, said about one third of the Association takes advantage of the current exemptions in the Workers' Compensation law. About one third do not cover themselves under Workers' Compensation insurance. This bill does three things: 1. Eliminates exemptions that currently exist for people engaged in physical labor on a construction site. 2. Employers are directly responsible for themselves and their employees covered by Workers' Compensation Insurance if engaged in the construction. A third party would not be held responsible in case a person had not appropriately carried Workers' Compensation Insurance. The liability falls directly on the responsible party. 3. An enforcement threat is established to ensure compliance. The Association made the decision that the problems had to be addressed despite the substantial increased insurance costs. Too many innocent people, workers, contractors, honest small businesses, homeowners, and etc. are being hurt. Everyone should be covered because the industry has a high accident rate. Homeowners are being held liable as third parties. Legitimate general contractors are having to compete against outfits without Workers' Compensation Insurance. Those who pay into the system are carrying the costs for the entire industry. Most of the accidents are entering back in the insurance trust whether they were covered by premium or not. As the inequity increases, the rates rise. This is a moral obligation on the industry's part to resolve this problem. This bill is supported by the Montana Building Industry Association, Flathead Builders' Association, Helena Home Builders' Association, Missoula Building Industry Association, Great Falls Home Builders' Association, and the Bozeman Building Industry Association.

Chuck Hunter, Department of Labor and Industry, said the current exemption process, from the Department's perspective, can only look at the relationship on paper. Many times the exemptions granted based on those relationships on paper are not the same relationships at the workplace. The proposed language does two things for the industry: 1. It doesn't specify who pays this cost. It only specifies that independent contractors must have coverage. 2. Once coverage is mandated, everyone in the industry will be operating on the same level.

Mark Lindsey, General Contractor, Helena, said the independent

contractor exemption in the current law is causing serious problems throughout the industry. Sole proprietors, partners, and corporate officers can exclude themselves from Workers' Compensation Insurance by obtaining the exemption. More contractors claim this exemption because of the rise in premiums. Many general contractors are now operating entirely without employees to avoid paying the premiums. They exempt themselves as the owners of the firms, and they hire subcontractors with or without the exemption to do the project. Part of the industry is operating legally or illegally without coverage. If an independent contractor is injured, he is usually awarded Workers' Compensation benefits because he is an employee of the general contractor or the homeowner and is entitled to benefits. The enforcement of the current law is put upon the contractor, and he is liable for back premiums and medical costs of an individual if it is determined that the individual is an employee. A homeowner could be liable if he is contracting directly with the injured party.

Bob Ross, Family Construction Company, Kalispell, said under the current law, those most in need of protection under Workers' Compensation do not have it. Under this bill everyone would be covered. Currently, most Workers' Compensation claims would not be covered by homeowner's liability insurance policy. It assures the homeowner that he would not lose everything based on an accident of someone claiming an exemption and becomes an employee. In the construction industry with subcontracting being done more, it is difficult to ensure that everyone is carrying coverage with the activity and time constraints. This bill protects the workers, the contractors, and homeowners. More people will be brought into the Workers Compensation Fund, which the legitimate contractors are supporting anyway.

Ken Dunham, Manager, Montana Contractor's Association, stated his association represents heavy highway or commercial building contractors. When an independent contractor is injured on the job, they suddenly become that employee. Most of the building contractors have faced major law suits.

Tim Dean, General Contractor, Bozeman, stated he hired a carpenter to roof a residential home he was building. The carpenter fell off the roof and filed a claim as an employee. Therefore, he (Tim Dean) was liable and had to pay. Three months later the carpenter was involved in a direct bid against Dean Construction. The carpenter didn't have a license, Workers' Compensation or Unemployment Insurance and his bid could not be beat. **Mr. Dean** stated he had an established business, he carries Workers' Compensation, he pays federal and state Unemployment Insurance, and he warranties his homes for ten years. He is concerned how that carpenter represents the industry.

Jim Caras, Missoula Homebuilders, stated he was a legal subcontractor in the cabinet manufacturing business. Many independent contractors do not have Workers' Compensation

Insurance, and they are fine until they get hurt. Then they go after the homeowner or the general contractor.

Gene Fenderson, Montana State Building and Construction Trades Union, said that over one third of the industry is working without coverage and the other two thirds is paying for their defaults. He proposed an amendment for Page 3, Line 12, where it says, "of buildings or other structures"; all construction should be covered under this, for example, utility work, highway work, home building, or commercial structures. The Committee may consider if that covers all aspects of the industry. Page 17 pertaining to the enforcement, it is workable with the Department so the declared independent contractors have the same coverage as other contractors in the construction field.

David Stein, Stein Builders, Properties, Improvement Company, Great Falls, stated his support on behalf of the Great Falls Home Builders' Association with the amendment.

Lars Ericson, Montana State Council of Carpenters, stated his support of HB 342.

Don Judge, Executive Secretary, AFL-CIO, stated his support with Gene Fenderson's amendment and presented written testimony. **EXHIBIT 8**

Opponents' Testimony: None

Questions From Committee Members:

REP. HANSON said to **REP. WANZENRIED** that he recalled a bill defeated last session that would allow the owner of a business out from underneath the payment of Workers' Compensation Insurance. The reason was that they could not collect on it, so they wanted to be excluded from paying into it. He asked **REP. WANZENRIED** if they can file claims and draw on it. **REP. WANZENRIED** said he wasn't familiar with that legislation. The bill requires any individual to cover himself with Workers' Compensation and would be eligible to file if injured.

Closing by Sponsor:

REP. WANZENRIED said the Legislature should look at the independent status as a whole as it applies to UI and Workers' Compensation.

EXECUTIVE ACTION ON HB 44

Discussion:

REP. DRISCOLL stated that the Committee was waiting for the Attorney General's opinion.

CHAIR SQUIRES deferred executive action until the Committee

received the Attorney General's opinion.

EXECUTIVE ACTION ON HB 141

Motion: REP. O'KEEFE MOVED HB 141 DO PASS.

Discussion:

Ms. McClure said there was a request to get a copy of the California statute which was received from Chuck Hunter. She explained amendments of the California language to be inserted into the bill. **EXHIBIT 9.** It gives a definition of reasonable assurance of employment. Written statements have to be given to the employee prior to the end of the first academic term, and it must inform the employee that he may file a claim for benefits and the determination for eligibility will be made by the department and not by the employer.

REP. FAGG asked **Ms. McClure** with the amendments would the bill be in compliance with federal regulations. **Ms. McClure** said yes; that is what Mr. Hunter believes. **REP. FAGG** asked if Mr. Hunter supported the bill with the amendments. **Ms. McClure** said he looked over the amendments last week.

REP. THOMAS asked **Ms. McClure** if it was her assessment that the amendments brought the bill into compliance with the federal statute. She said there wasn't a mechanism for determining reasonable assurance. Once this mechanism in place, Montana would be within the federal statute.

Motion/Vote: **REP. KILPATRICK** moved to amend HB 141. Motion carried unanimously.

Motion: REP. O'KEEFE MADE A SUBSTITUTE MOTION THAT HB 141 DO PASS AS AMENDED.

Discussion:

REP. THOMAS said that the unemployment compensation tax is the highest tax paid, except for Workers' Compensation in the more hazardous areas. The fiscal note shows a large amount of money. When people go to work for the school districts, they know that their jobs last for nine months. He asked **REP. DRISCOLL** if teachers could receive unemployment for the summer like the nonprofessional workers. **REP. DRISCOLL** said teachers are given a contract by April 1 that they will be rehired for the next term. If they are not rehired, they get their whole salary. **REP. THOMAS** asked if the district guaranteed rehire for the nonprofessional school employees, they would not be eligible for unemployment benefits. **REP. DRISCOLL** said that is what the amendments do. If the school district will give the nonprofessional employees a written assurance that they will be rehired in September, they can't draw unemployment. They don't receive their salary that they would have earned, but they can

file retroactive unemployment benefits. **REP. THOMAS** said HB 141 as amended says if the school district guarantees their re-employment in September, they are not eligible for unemployment benefits. **REP. DRISCOLL** said yes.

REP. PAVLOVICH asked **REP. DRISCOLL** if secretaries would be included. **REP. DRISCOLL** said with the amendments, anybody who works for a school district that is given written assurance to be rehired and are rehired in September would be included.

REP. JOHNSON asked **REP. DRISCOLL** if the people who run the buses have a contract with the school district in time to give their employees the assurance. **REP. DRISCOLL** said if it's a contractor to a school district, for example, in Billings, those people can draw unemployment because they don't work directly for the school district. The towns where the school districts run their own bus system would be affected.

Vote: **HB 141 DO PASS AS AMENDED.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 187

Motion: **REP. DRISCOLL MOVED HB 187 DO PASS.**

Motion/Vote: **REP. DRISCOLL** moved to amend HB 187. **EXHIBIT 10.** Motion carried unanimously.

Motion: **REP. DRISCOLL MADE A SUBSTITUTE MOTION THAT HB 187 DO PASS AS AMENDED.**

Discussion:

REP. DRISCOLL said SB 11, sponsored by Sen. Thayer, goes along with the package of bills about Workers' Compensation in the construction industry. That bill will change the preference for Montana contractors bidding against out-of-state contractors to make it reciprocal with those other states. Currently, if a Wyoming contractor comes to Montana, there is a 3 percent preference for a Montana contractor. If a Montana contractor goes to Wyoming there is a 5 percent preference. SB 11 will change it to 5 percent both ways. With HB 187, SB 11, and HB 342, the Montana contractors are more competitive in the surrounding states.

REP. WANZENRIED asked **REP. DRISCOLL** if he knew what the impact will be in shifting the rates away from the higher paying contractor, which are usually union contractors, to non-union in the short-term range. **REP. DRISCOLL** said if the Division were to do it correctly it would take a wage rate that is in between and the percentages now used to figure a dollar amount per hour. In the construction industry, except some contractors in the home building industry, every injured employee is eligible for the maximum benefit amount in weekly lost time anyway, and the medical bills are the same no matter what the income was before

the injury. The rate will change a few dollars either way depending what the employer is paying the employees.

REP. JOHNSON said there could be problems in record keeping. Perhaps the solution could be that the employers could pay the prevailing Workers' Compensation rate. Out-of-state employers would have to pay the Montana rate. This possibility needs to be researched.

Vote: **HB 187 DO PASS AS AMENDED.** Motion carried 17 to 1 with **REP. WANZENRIED** voting no.

EXECUTIVE ACTION ON HB 232

Motion: **REP. COCCHIARELLA MOVED HB 232 DO PASS.**

Motion/Vote: **REP. O'KEEFE** moved to amend HB 232. **EXHIBIT 11.** Motion carried unanimously.

Motion/Vote: **REP. COCCHIARELLA MADE A SUBSTITUTE MOTION THAT HB 232 DO PASS AS AMENDED.** Motion carried unanimously.

EXECUTIVE ACTION ON HB 356

Motion/Vote: **REP. DRISCOLL** moved to amend HB 356. **EXHIBIT 12.** Motion carried unanimously.

Motion/Vote: **REP. BECK MOVED HB 356 DO PASS AS AMENDED.** Motion carried 16 to 2 with Reps. Benedict and Thomas voting no.

EXECUTIVE ACTION ON HB 342

Motion: **REP. COCCHIARELLA MOVED HB 342 DO PASS.**

Discussion:

REP. HOFFMAN said on Page 8, Paragraph 3, Line 20, the paragraph reads that a sole proprietor or a working member of a partnership can apply for an exemption from Workers' Compensation if he is contracting for cosmetologists, barber, or construction trades services. **REP. WANZENRIED** must not have intended for this to be included in the bill. **Ms. McClure** said it reads that a sole proprietor who holds himself out must carry Workers' Compensation coverage for his employees. Unless he is contracting, he may apply for an exemption for himself. **REP. HOFFMAN** said unless he is construction trades services, he may apply for himself. The barbers and cosmetologists have been put in the same category as the construction trade workers. Under the old statute the cosmetologists and barbers were completely removed. He suggested the way the bill should read, a sole proprietor or working member of a partnership who holds himself out or considers himself an independent contractor "except one who is contracting for cosmetologist services or barber services as defined in that

statute," must elect to be bound personally or individually by the provisions of Workers' Compensation Plan 1,2, or 3, but unless he is contracting for construction trade services, he may apply to the Department for an exemption. **Ms. McClure** said she thought the intent was to group them with cosmetologists and barbers. **REP. HOFFMAN** said the way he reads the old statute, it should be the opposite. Construction trade workers are to be in a different category by themselves where they can apply for an exemption and the cosmetologists and barbers don't have to elect to do so.

REP. COCCHIARELLA WITHDREW HER MOTION THAT HB 342 DO PASS.

REP. DRISCOLL asked **Ms. McClure** with the way the bill is written, can a sole proprietor get an exemption in the construction industry. **Ms. McClure** said yes. **REP. DRISCOLL** said that is not the intent of the bill. The intent is exactly opposite; the intent is that nobody in construction can be exempt from having a policy.

REP. DRISCOLL asked **Ms. McClure** to research Section 8, if the general contractor knows and can be proven that he knows that the subcontractor does not have a policy, to find out if there could be a third person lawsuit against him.

CHAIR SQUIRES deferred Executive Action on HB 342 until February 7, 1991.

ADJOURNMENT

Adjournment: 5:45 p.m.

CAROLYN SQUIRES, Chair

JENNIFER THOMPSON, Secretary

CS/jt

HOUSE OF REPRESENTATIVES

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL DATE 2/5/91

NAME	PRESENT	ABSENT	EXCUSED
REP. JERRY DRISCOLL	✓		
REP. MARK O'KEEFE	✓		
REP. GARY BECK	✓		
REP. STEVE BENEDICT	✓		
REP. VICKI COCCHIARELLA	✓		
REP. ED DOLEZAL	✓		
REP. RUSSELL FAGG	✓		
REP. H.S. "SONNY" HANSON	✓		
REP. DAVID HOFFMAN	✓		
REP. ROYAL JOHNSON	✓		
REP. THOMAS LEE	✓		
REP. BOB PAVLOVICH	✓		
REP. JIM SOUTHWORTH	✓		
REP. FRED THOMAS	✓		
REP. DAVE WANZENRIED	✓		
REP. TIM WHALEN	✓		
REP. TOM KILPATRICK, V.-CHAIR	✓		
REP. CAROLYN SQUIRES, CHAIR	✓		

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HOUSE STANDING COMMITTEE REPORT

February 6, 1991

Mr. Speaker: We, the committee on Labor report that House Bill 141 (first reading copy -- white) do pass as amended .

Signed: Carolyn Squires, Chairman

And, that such amendments read:

1. Page 2, lines 4 and 5.
Following: "or" on line 4
Insert: "has been provided a written statement indicating the following to the individual no later than 30 days before the end of the first of the academic years or terms:
(a) whether there is a"
Following: line 4
Insert: "reemployment"

2. Page 2, line 7.
Following: "terms"
Insert: ";
(b) whether it is stated that the individual has no reasonable assurance of reemployment and that the individual should file a claim for benefits at the close of the academic year or term;
(c) if it is stated that the individual has reasonable assurance of reemployment, that the written statement inform the employee that he may file a claim for benefits and that the determination for eligibility for benefits is made by the department and not by the employer; and
(d) if it is stated that the individual has reasonable assurance of reemployment, that the individual is entitled to a retroactive payment of benefits if he:
(i) is not offered an opportuntiy to perform the services for the education institution for the subsequent academic years or terms;
(ii) is otherwise eligible and filed a claim for each week benefits are claimed; and
(iii) filed a claim for retroactive benefits no later than 30 days following the commencement of the subsequent academic year or term"

7.30
2-6-91
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3. Page 3, lines 13 and 14.
Following: "~~section~~."
Strike: the remainder of line 13 through "term" on line 14
Insert: "(4) For the purposes of this section:
(a)"

4. Page 3, line 17.
Following: "institutions"
Insert: "; (b) "reasonable assurance" includes but is not limited to an offer of employment or assignment made by the educational institution if the offer or assignment is not contingent on enrollment, funds, or program changes. An individual who has been notified that he will be replaced and does not have an offer of employment or assignment to perform services for an educational institution is not considered to have reasonable assurance."

JENNIFER

CLERICAL

H Bill No. 141

Date: 2/6

Time: 12:40 p.m.

Cay
(Legislative Council Staff)

☒ Labor
S / (H) Standing Committee

Caroline Fabian
(Chairman)

☐ S / H Committee of the Whole

(Sponsor)

In accordance with the Rules of the Montana Legislature, the following clerical errors may be corrected:

2. Insert: (d)(i) "opportunity" spelling

"educational"

~~4. Insert~~: consistency with (4)(6)

An objection to these corrections may be registered by the Secretary of the Senate, the Chief Clerk of the House, or the sponsor by filing the objection in writing within 24 hours after receipt of this notice.

2-6-91
HB

HOUSE STANDING COMMITTEE REPORT

February 6, 1991

Mr. Speaker: We, the committee on Labor report that House Bill 187 (first reading copy -- white) do pass as amended .

Signed: Carolyn Squires, Chairman

And, that such amendments read:

1. Title, line 11.
Following: "39-71-116,"
Insert: "39-71-402, 39-71-426,"

2. Page 5, line 4.
Following: "means"
Strike: "any"
Insert: "an"

3. Page 8, line 4.
Following: "2"
Insert: "and plan No. 3"

4. Page 8, line 9.
Following: line 8
Insert: "Section 4. Section 39-71-402, MCA, is amended to read:

"39-71-402. Extraterritorial application and reciprocity -- exception. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this chapter shall apply to such worker as though he were injured within this state.

(2) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this chapter shall not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of such other state which applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another

state certifying that an employer of such other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

(5) The provisions of this section do not apply to the construction industry as defined in 39-71-116."

Section 5. Section 39-71-426, MCA, is amended to read:

"39-71-426. Reciprocal agreements with Canadian provinces -- exception. (1) Subject to the conditions provided in 39-71-427 and subsection (2) of this section, the governor may enter into agreements with duly authorized representatives of any Canadian province, granting reciprocal application of the workers' compensation laws of this state to Montana employers and workers if they are temporarily engaged in work in that province.

(2) Subsection (1) does not apply to the construction industry as defined in 39-71-116.""

Renumber: subsequent sections

2-6-91
HB

HOUSE STANDING COMMITTEE REPORT

February 6, 1991
Page 1 of 1

Mr. Speaker: We, the committee on Labor report that House Bill 232 (first reading copy -- white) do pass as amended .

Signed: Carolyn Squires
Carolyn Squires, Chairman

And, that such amendments read:
1. Page 1, line 16.
Following: "court"
Strike: "of"
Insert: "in the county in which the claim arose or to the district court of"

HOUSE STANDING COMMITTEE REPORT

February 6, 1991

Mr. Speaker: We, the committee on Labor report that House Bill 356 (first reading copy -- white) do pass as amended .

Signed: Carolyn Squires
Carolyn Squires, Chairman

And, that such amendments read:

1. Title, line 6.
Following: "OR"
Strike: "FULL-TIME"

2. Title, line 8.
Strike: "A RETROACTIVE"
Insert: "AN"

3. Page 1, line 25.
Following: "or"
Strike: "full-time"

4. Page 2, line 22.
Following: "2."
Strike: "Retroactive applicability"
Insert: "Applicability"

5. Page 2, lines 23 and 24.
Following: "applies"
Strike: remainder of line 23 through "1-2-109,"
Following: "after"
Strike: "January 1, 1989"
Insert: "[the effective date of this act]"

EXHIBIT 1
DATE 2/5/91
HB HJR 29

HOUSE JOINT RESOLUTION
to
Restore Montana's Dislocated Worker Funds

Whereas, Job Training Partnership Act Title III funds used to train dislocated workers were increased nationwide by 14 percent for fiscal year 1991, and

Whereas, Montana's share of those funds was cut by 18 percent for the same year, and

Whereas, 5 of the top 7 states whose funds were cut are western states who continue to suffer the effects of the oil recession, and

Whereas, Montana's number of dislocated workers is increasing, and

Whereas, the amount of funds with the U.S. Department of Labor available for discretionary uses increased by $14 million in fiscal year 1991, and

Whereas, the total cuts amount to $17.8 million.

Therefore, let it be resolved that the Montana Legislature encourage the U.S. Secretary of Labor allocate national reserve funds to those states including Montana which received dislocated worker cuts.

Ex. 1
2/5/91
HJR 29

U.S. Department of Labor
JTPA Title III Dislocated Worker
Funding Cuts

State	%	$
Louisiana	- 39	7,533,868
Arizona	- 30	1,686,392
Colorado	- 28	1,989,818
Kentucky	- 19	1,681,021
Wyoming	- 19	186,281
Montana	- 18	302,313
Oklahoma	- 18	1,101,246
Mississippi	- 10	849,669
Arkansas	- 8.5	145,354
Maryland	- 8.5	300,409
New Mexico	- 6	189,959
Hawaii	- 5	25,892
Nevada	- 5	63,396
Wisconsin	- 5	251,725
Texas	- 3	1,227,744
Tennessee	- 2	135,323
Alabama	- 1	88,162
North Dakota	- 1	4,405
West Virginia	- .3	18,779
	TOTAL	17,781,756

EXHIBIT 2
DATE 2/5/91
HB 356

DONALD R. JUDGE
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

Testimony of Don Judge before the House Labor and Employment Relations Committee, February 5, 1991

Madam Chair and members of the committee, for the record I am Don Judge, and I am here today to testify on behalf of the Montana State AFL-CIO in support of House Bill 356.

This bill would make a simple clarification to Montana law regarding the appointment of labor members to the Board of Personnel Appeals. The requirements of House Bill 356 would mandate that the labor representatives on this board be either full-time employees or full-time elected officials of a labor union or association.

Although this somewhat restricts the field of potential appointees, we believe that past history of appointments mandates something be done to return the balance to a board which has significant power to impact and influence labor relations in the state of Montana.

Under current law, two members of this five member board are required simply to have had "experience as a member or employee of an employee organization". This has allowed for board members to come from the ranks of management based upon previous membership or experience in an employee organization, or bargaining unit.

We believe that the drafters of the law providing for the Board of Personnel Appeals never intended for this to happen, and we would urge your support in adopting House Bill 356 to return a balance to a regulatory board so important to workers and their organizations in our state.

Please give House Bill 356 a do pass recommendation.

Thank you.

EXHIBIT 3
DATE 2/5/91
HB 305

Amendments to House Bill No. 305
First Reading Copy

For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 5, 1991

1. Title, line 12.
Following: "39-51-1109,"
Insert: "AND"

2. Title, line 13.
Following: line 12
Strike: "39-71-204, AND 39-72-612,"

3. Page 2, lines 7 and 8.
Following: "court" on line 7
Strike: remainder of line 7 through "supreme court" on line 8

4. Page 4, line 14 through page 6, line 8.
Strike: sections 5 and 6 in their entirety
Renumber: subsequent sections

EXHIBIT 4
DATE 2/5/91
HB 305

DEPARTMENT OF LABOR AND INDUSTRY

LEGAL SERVICES DIVISION

STAN STEPHENS, GOVERNOR

P.O.BOX 1728

STATE OF MONTANA

LEGAL - (406) 444-4493
HEARINGS - (406) 444-4662

HELENA, MONTANA 59624

February 5, 1991

TESTIMONY BEFORE THE HOUSE LABOR COMMITTEE ON HOUSE BILL 305

BY WILLIAM E. O'LEARY, CHIEF LEGAL COUNSEL OF THE DEPARTMENT OF LABOR AND INDUSTRY

Madam Chair and members of the committee.

HB 305 Tape Recordings as part of appeal record; Telephone Hearings Authorized

HB 305 is submitted at the request of the Department of Labor and involves hearings that are conducted daily.

The Legal Services Division is composed of a legal staff and hearing unit composed of eight hearing officers. These Hearing Officers daily hold many and varied hearings regarding all labor issues - workers' compensation and wage and hour issues, collective bargaining disputes and unemployment insurance tax and benefit issues.

I understand Mike Micone the Labor Commissioner provided you with copies of a report to the Governor and the State concerning Department activity. On page 14 & 15 the current activity of the Legal Services Division is described. The Hearing Officer Unit in 1990 processed 2000 files an increase of 78% over 1989. That figure in turn represents an increase of 94% over 1988.

The 2000 files processed in 1990 in round figures consists in 1600 unemployment insurance benefit cases. The remaining 400 cases involve workers' compensation and wage and hour issues, collective bargaining disputes and unemployment insurance tax matters.

Because of the urgency in which these hearings must be held for example the Federal Department of Labor requires us to process 60% of all appeals in 30 days and 80% in 45 days, at least two Hearing Officers regularly hear and decide 6 - 8 unemployment insurance benefit hearings daily - all by telephone in order to meet these minimum requirements. Since all other issues - wage and hour, workers' compensation, unemployment insurance tax issues - all impact employers and employees throughout the State these hearings are also conducted by telephone as a convenience to all parties. If we required all employers and employees to attend in person hearings at a particular site not only would the Department miss its minimum hearing requirement but each party would be required to miss work, take supporting witnesses with them, and travel to Helena or another town in Montana.

Because of these problems the Department historically holds telephone hearings in the vast majority of these 2000 hearings. If persons so request in person hearings are given.

In recent months several District Courts have issued warnings to the Department threatening to eliminate telephone hearings or criticizing the existence of a tape recording being used on appeal.

If telephone hearings are not permitted the Department could not handle the resulting work load and still stay current with the current work load or meet federal requirements.

HB 305 would permit the Department Of Labor and Industry to hold telephone hearings for all subject matter within which it has jurisdiction, this would include wage and hour, unemployment insurance issues, workers' compensation and collective bargaining.

I urge your support of HB 305

EXHIBIT 2
DATE 2/5/91
HB 336

Amendments to House Bill No. 336
First Reading Copy

Requested by Representative Simpkins
For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 6, 1991

1. Title, line 7.
Following: "DUE;"
Insert: "REQUIRING AN EMPLOYER TO PAY THE EMPLOYEE ANNUALIZED INTEREST ON UNPAID WAGES;"

2. Page 1, line 23.
Following: "~~shall~~"
Strike: "must"
Insert: "may"

3. Page 2, line 7.
Following: "due."
Insert: "The employer shall also pay the employee annualized interest on the unpaid wages from the date the wages were due. The interest must be calculated by the department and compounded annually, but the annualized rate may not exceed 2 percentage points a year above the prime rate of major New York banks on the date of settlement."

4. Page 5, lines 9 and 10.
Following: "wages" on line 9
Strike: ","
Insert: "or"
Following: "taxes"
Strike: remainder of line 9 through "premiums" on line 10

EXHIBIT 6
DATE 2/5/91
HB 336

DEPARTMENT OF LABOR AND INDUSTRY

COMMISSIONER'S OFFICE

STAN STEPHENS, GOVERNOR
P.O.BOX 1728
STATE OF MONTANA
(406) 444-3555
HELENA, MONTANA 59624

February 5, 1991

TESTIMONY BEFORE THE HOUSE LABOR COMMITTEE ON HOUSE BILL 336

BY COMMISSIONER MIKE MICONE, THE DEPARTMENT OF LABOR AND INDUSTRY

Madam Chair and members of the committee.

HB 336 is before you at the request of the Department. The purpose for this legislation is threefold:

1. A technical correction of a provision in a legislative enactment in 1989 that allows the department to enter into a default order against an employer for wages due and the determination is not appealed by the employer. This correction is in Section 3 of the bill.

2. The second purpose is to clarify the bond provision as outlined in Section 4. Presently, the operator of a restaurant or bar is required to file a bond with the Department equal to double the amount of the projected semimonthly payroll. The purpose of the bond was to assure employees were guaranteed their wages. If the business is to cease operations, it is our intention that the proceeds of the bond will first be used to pay wages owing to employees; remaining proceeds would pay payroll taxes due and owing. None of the proceeds would be used to pay workers' compensation premiums.\

3. The third provision of the bill (Section 1) is a change that will enable the Department to bring about a more timely resolution to contested wage cases. Presently the Department is required to impose a penalty equal to 5% per day of the wages due and unpaid, not to exceed 100%. This penalty becomes part of the settlement to the employee. There is no leeway in the law for the Department to settle cases.

"AN EQUAL OPPORTUNITY EMPLOYER"

Our proposal is to allow the Department to impose a penalty up to 100% and the proceeds collected would revert to the Department for the operations of the legal unit. We agree with the amendment offered by the sponsor that gives accumulative interest to the claimant separate and apart from the penalty imposed.

The Department presently is acting on behalf of the claimants receiving no fees for the services performed. In addition, if the claimant refuses to settle for the amount of wages owed and insists on the penalty, Department expenses expand accordingly by requiring our legal staff to obtain depositions or pay travel expenses to Helena for a trial.

A classic example is a wage claim case of 93 workers against Centel filed in 1984. While the exact damages based on the number of workers and hours is still disputed, the Department would like to settle the case for what we believe is owed. We believe settlement would avoid costly discovery and extended trial. Several of the claimants have demanded the penalty thus protracting our efforts to settle.

Many times our hearing officers attempt to negotiate settlements prior to the hearing. Employers are opposed to paying any penalty and the employee, upon hearing of the 100% penalty, refuse to settle for the wages owed.

We believe that providing for interest to be paid to the claimant and allowing the Department flexibility will go a long way toward resolving cases and get the aggrieved workers their wages in a more timely manner.

We encourage passage of HB336.

EXHIBIT 6
DATE 2/5/91
HB 336

5 June 1989

Department of Labor + Indust
State of Montana
Commissioners Office
PO Box 1728
Helena, Montana
59624

RE: Wage Claim against
Wilco-Centel

In 1983 we installed several Public Business Exchanges and wired many buildings including the State Capitol Complex and three major state Universities in Billings, Bozeman, and Missoula, Mont. We worked many long hard hours cutting over the new phone systems. During the tenure of our employment in 1983, we obtained copies of our union labor contract and noted several discrepancies in the contract including prevailing wage and the per diem in the contract. On discovering we weren't being paid properly we filed a petition six years ago and now understand the case is going to court Oct 6 1989. We the undersigned feel that we should have due wages and compensations that should have been paid to us years ago.

Ex. 6
2/5/91
HB 336

Michael J Duffin	P.O Box 302	Eldred, IL 62027
John D. Ford	RR I Box 118	Hillview IL 62050
John Wyrick	527 Potter ST.	Whitehall IL 62092
Rick Lawson	Box 143	Hillview IL 62050
Roger D. Cox	Box 21	Hillview, Ill.
Marilyn R. Cox	Box 21	Hillview, Ill.
Ralph D. Cox	Box 132	Hillview, IL.
Bobby E. Hurt	Box 64	Hillview, IL.
Matthew J Ivers	Box 27	ELDRED. IL 62027

EXHIBIT 7
DATE 2/5/91
HB 336

DONALD R. JUDGE
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

Testimony of Don Judge before the House Labor and Employment Relations Committee, February 5, 1991

Madam Chair and members of the committee, for the record my name is Don Judge and I am here today to testify on behalf of the Montana State AFL-CIO in opposition to House Bill 336.

As has been described to you, this bill would amend current law to provide that fines assessed against an employer for failure to pay wages in accordance with the time frame specified in law, would be paid to the Department of Labor rather than to the employee effected.

For employees who may be forced to wait for several months to collect back wages, this could mean the difference in ability to pay bills long overdue, to cover medical costs long overdue, or to simply furnish food for their table. Although we appreciate that there are costs involved with the Department of Labor in investigation and collection of such wages, we also believe that the moral obligation of the State is to do so within the regular funding sources available. Currently the fund used to support wage claim activities is the Unemployment Insurance Administrative Tax Revenue. This seem to us to be an appropriate financing arrangement for this activity.

Madam Chair, members of the committee, this is a simple bill which may create significant problems for employees who are already facing difficulties as a result of their employer's wage default. It is our opinion that House Bill 336 is a bad idea and should be given a "do not pass" recommendation by this committee.

Thank you.

EXHIBIT 8
DATE 2/5/91
HB 342

DONALD R. JUDGE
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

Testimony of Don Judge before the House Labor and Employment Relations Committee, February 5, 1991.

Madam Chair and members of the Committee, for the record I am Don Judge, here to testify on behalf of the Montana State AFL-CIO in support of House Bill 342.

As the sponsor has described to you, this bill would mandate workers' compensation coverage for independent contractors engaged in a construction trade.

We find some irony in this bill, as it hasn't been too long ago that independent contractors were vying to remove themselves from the requirements of mandated workers' compensation coverage. The argument used then was that these individuals were people who should be excluded because:

1. They were free from control or direction over the performance of their services, and

2. They were engaged in an independently established trade, occupation, profession or business.

Now we find that these individuals are realizing the necessity of having workers' compensation protection in the dangerous occupations of the construction industry.

Madam Chair, members of the committee, it has always been our belief that workers in any occupation should be afforded the protections of medical costs incurred and stop gap provisions for lost wages as a result of on-the-job injuries. We are highly supportive of the efforts of these independent contractors to mandate workers' compensation protection in this industry.

In addition, we also see a positive impact in passing this legislation on good contractors already providing workers' compensation protection for their workforce. House Bill 342 should level the playing field for these contractors with those contractors who deny this basic protection when bidding for construction jobs.

We urge this committee to give House Bill 342 a do pass recommendation.

Thank you.

EXHIBIT 9
DATE 2/5/91
HB 141

Amendments to House Bill No. 141
First Reading Copy

Requested by Representative Harrington
For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure
January 30, 1991

1. Page 2, lines 4 and 5.
Following: "or" on line 4
Insert: "has been provided a written statement indicating the following to the individual no later than 30 days before the end of the first of the academic years or terms:
(a) whether there is a"
Following: line 4
Insert: "reemployment"

2. Page 2, line 7.
Following: "terms"
Insert: ";
(b) whether it is stated that the individual has no reasonable assurance of reemployment and that the individual should file a claim for benefits at the close of the academic year or term;
(c) if it is stated that the individual has reasonable assurance of reemployment, that the written statement inform the employee that he may file a claim for benefits and that the determination for eligibility for benefits is made by the department and not by the employer; and
(d) if it is stated that the individual has reasonable assurance of reemployment, that the individual is entitled to a retroactive payment of benefits if he:
(i) is not offered an opportuntiy to perform the services for the education institution for the subsequent academic years or terms;
(ii) is otherwise eligible and filed a claim for each week benefits are claimed; and
(iii) filed a claim for retroactive benefits no later than 30 days following the commencement of the subsequent academic year or term"

3. Page 3, lines 13 and 14.
Following: "~~section~~."
Strike: the remainder of line 13 through "term" on line 14
Insert: "(4) For the purposes of this section:
(a)"

4. Page 3, line 17.
Following: "institutions"
Insert: "; (b) "reasonable assurance" includes but is not limited to an offer of employment or assignment made by the educational institution if the offer or assignment is not contingent on enrollment, funds, or program changes. An individual who has been notified that he will be replaced

Ex. 1
2/5/91
HB 141

and does not have an offer of employment or assignment to perform services for an educational institution is not considered to have reasonable assurance."

EXHIBIT 10
DATE 2/5/91
HB 187

Amendments to House Bill No. 187
First Reading Copy

Requested by Representative Driscoll
For the House Committee on Employee and Labor Relations

Prepared by Eddye McClure
January 29, 1991

1. Title, line 11.
Following: "39-71-116,"
Insert: "39-71-402, 39-71-426,"

2. Page 5, line 4.
Following: "means"
Strike: "any"
Insert: "an"

3. Page 8, line 4.
Following: "2"
Insert: "and plan No. 3"

4. Page 8, line 9.
Following: line 8
Insert: "**Section 4.** Section 39-71-402, MCA, is amended to read:

"**39-71-402. Extraterritorial application and reciprocity -- exception.** (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this chapter shall apply to such worker as though he were injured within this state.

(2) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this chapter shall not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of such other state which applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of

the agreeing states.

(5) The provisions of this section do not apply to the construction industry as defined in 39-71-116."

Section 5. Section 39-71-426, MCA, is amended to read:

"**39-71-426. Reciprocal agreements with Canadian provinces -- exception.** (1) Subject to the conditions provided in 39-71-427 and subsection (2) of this section, the governor may enter into agreements with duly authorized representatives of any Canadian province, granting reciprocal application of the workers' compensation laws of this state to Montana employers and workers if they are temporarily engaged in work in that province.

(2) Subsection (1) does not apply to the construction industry as defined in 39-71-116.""

Renumber: subsequent sections

EXHIBIT 11
DATE 2/5/91
HB 232

Amendments to House Bill No. 232
First Reading Copy

Requested by Representative O'Keefe
For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure
January 30, 1991

1. Page 1, line 16.
Following: "court"
Strike: "of"
Insert: "in the county in which the claim arose or to the district court of"

EXHIBIT 12
DATE 2/5/91
HB 356

Amendments to House Bill No. 356
First Reading Copy

For the House Committee on Labor and Employee Relations

Prepared by Eddye McClure
February 6, 1991

1. Title, line 6.
Following: "OR"
Strike: "FULL-TIME"

2. Title, line 8.
Strike: "A RETROACTIVE"
Insert: "AN"

3. Page 1, line 25.
Following: "or"
Strike: "full-time"

4. Page 2, line 22.
Following: "2."
Strike: "Retroactive applicability"
Insert: "Applicability"

5. Page 2, lines 23 and 24.
Following: "applies"
Strike: remainder of line 23 through "1-2-109,"
Following: "after"
Strike: "January 1, 1989"
Insert: "[the effective date of this act]"

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Labor & Employment Relations COMMITTEE BILL NO. 356

DATE 2/5/91 SPONSOR(S) Gary Beck

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Don Judge	MT STATE AFL-CIO	X	
Tom Schneider	MPEA	X	
Robert K. Murphy. Helena.	International Brotherhood Electrical Workers -	X	
Jim Stucky Townsend MT	Operating Eng. Local 400	X	
Phil Campbell	MEA	X	
Nick Juricau	DLI		X
Eugene Jensen	MT State Bldg trades	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Labor & Employment Relations **COMMITTEE** **BILL NO.** 305

DATE 2/5/91 **SPONSOR(S)** Rep. Jim Rice

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Tim Reardon	W. L. Council		V
Wm E O'Leary	Dept Labor & Industry	✓	
~~John Norrish~~	~~FLATHEAD BA~~	~~✓~~	
George Wood	Montana Self Insurers Assn	✓ Amended	
Phil Campbell	MEA	✓ Amended	
Don Judge	MT STATE AFL-CIO	Amend	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Labor & Employment Relations **COMMITTEE** **BILL NO.** 336

DATE 2/5/91 **SPONSOR(S)** Rep. Richard Simpkins

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Don Judge	MT STATE AFL-CIO		X
Robert K Murphy. Helena.	International Brotherhood. Electrical workers.		X
Jim Stucky Townsend MT	Operating Eng #400		X
Mark Landoe	AFSCME		X
Phil Campbell	MEA		X
Mike Micone	DLI	X	
Ernie Fenske	Mt St Blg Trades		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Labor & Employment Relations **COMMITTEE** **BILL NO.** HB 342

DATE 2/5/91 **SPONSOR(S)** Dave Wanzenried

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Mark Lindsay - Helena	Helena HBA	X	
JOHN NORCIST	FLATHEAD NBA	X	
Robert K. Murphy. Helena.	International Brotherhood Electrical Workers.	X	
Tim DeAN - Bozeman	BIA of Southwest MT.	X	
Blair D. Ross	Flathead Building assoc.	X	
David Steen	GT. FALLS H.B.A. & STEEN BUILDERS	X	
Don Judge	MT STATE AFL-CIO	X	
GENE PHILLIPS	ALLIANCE AMER. INSURERS		X
DON CHANCE	MT. Building Industry	X	
Jim Caras	Missoula Homebuilders	X	
Eugene Fenderson	MT State Bldg Trades	X	
Ken Dunham	MT Contractors' Assoc	X	
LARS ERICSON	MONT. STATE CARPENTERS	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Thomas E. Towe, Vice Chair, on March 7, 1991, at 3:15 p.m.

ROLL CALL

Members Present:

Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Steve Doherty (D)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: Richard Manning, Chairman (D)

Staff Present: Tom Gomez (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: NONE.

HEARING ON HOUSE BILL 232

Presentation and Opening Statement by Sponsor:

Representative Robert Clark told the Committee House Bill 232 deals with the disciplinary actions for the Highway Patrol giving Highway Patrol officers covered by a collective bargaining agreement "equal footing" with the right to appeal.

Proponents' Testimony:

Tom Schneider of the Montana Public Employees Association spoke in support of House Bill 232 from prepared testimony. (Exhibit #1)

Opponents' Testimony:

Peter Funk, Assistant Attorney General assigned to represent the Highway Patrol told the Committee they are not "vehemently opposed" to the idea. He explained the standpoint they approach the issue from is the appeal which is reflected in Section 1, an

appeal which occurs after a "full-blown" contested case disciplinary process existing in statute now. These are essentially a trial-type setting with a proposed decision issued by a hearing examiner which is then either accepted or rejected by the Attorney General. All of which occurs before the appeal. He explained the primary point in opposition to this bill is that it is the norm to have the court system review administrative actions. After the Attorney General has made his decision, the existing statute is set for approximately forty years; that the entity which should review those decisions is the court system. House Bill 232 proposes the review of that administrative decision be handled through the collective bargaining process. It would change from the traditional handling on the appellate side of administrative actions. He explained there is no bias against binding arbitration or a collective bargaining process. He commented there is some uncertainty, which is built into the statutory provision, if a collective bargaining process is referenced for appeal. On the cycle now, this particular agreement with the Highway Patrol members is negotiated on a two year basis. The collective bargaining agreement runs for twenty-four month period. The only certain about the appellate process is to the termination date of the current collective bargaining agreement. As the statute is drafted now the appeal procedure is certain; it's a district court review. Under the proposal it is not as certain, because it depends on a collective bargaining process to the end of the current agreement.

Bob Griffith representing the Montana Highway Patrol spoke in opposition to House Bill 232. He explained this would set a duel system for discipline amongst the officers. Not everyone in the Highway Patrol are in a bargaining unit. He commented binding arbitration eliminates appeals, but not with the district court process. He told the Committee the existing statute has existed for 56 years with no problems. He explained he would not like to "think about negotiating discipline" every two years when the union contract is up. He told the Committee discipline should be set by statute and should be above and beyond the negotiation for the uniform officers of the Montana Highway Patrol. A police agency should be governed by state statute rather than a binding arbitration. (Mr. Griffith did not sign the Visitor's Register but his testimony is entered here.)

Questions From Committee Members:

Senator Aklestad asked Representative Clark why House Bill 232 introduced when those people directly involved are opposed to it. Representative Clark explained some recent occurrences were not handled properly. He explained "some people thought they were mislead".

Senator Lynch asked Representative Clark how he would respond to Colonel Griffith's statement that the process has been working for 56 years. He asked what instances have occurred.

Representative Clark deferred the question the Tom Schneider. Mr. Schneider told the Committee all other state employees have the right to grieve through a contact grievance procedure, and ultimately go to binding arbitration. He explained the entire process is determined by the Attorney General. He selects the hearings officer. There were two cases in the last two years, one of which the hearings officer, selected by the Attorney General, recommended a person not be terminated. The Attorney General terminated. The district court did not overrule the Attorney General. They will not overrule unless a specific error is found in the record. The facts are not looked at.

Senator Devlin asked Mr. Schneider about his statement that all other state employees have the right to grieve. He cited the fish and game. Mr. Schneider told the Committee there are statutory procedures for both the Highway Department and the Fish and Game. In both cases, if a procedure is in the contract; the contract procedure is followed, or the statutory procedure is followed at the choosing of the employee. With the Highway Patrol, because the process is defined in statute only; currently without amending the statute, the statutory procedure only can be used.

Closing by Sponsor:

Representative Clark closed on House Bill 232. He told the Committee this bill would not change, and would not interfere with the Attorney General's right to suspend, demote, or discharge. It does not take away his right to appoint a hearings officers. It provides after the Attorney General has made a decision, the Highway Patrol officer will have the right to appeal grievance resolution provision of the collective bargaining agreement.

HEARING ON HOUSE BILL 336

Presentation and Opening Statement by Sponsor:

Representative Dick Simpkins presented House Bill 336 to the Committee. He explained the bill at the request of the Department of Labor and Industry is to clarify procedures in two areas. One in which the DOLI enters a procedure to recover unpaid wages to an employee by an employer; and a priority for bond payments for restaurants, bars, etc. At the present time the law states the department, if it intercedes to recover employee wages, must levy a penalty on the employer at a rate of 5% of the total wages due for a period not to exceed 20 days. He told the Committee this sets up a "deadlock". The employee knows he can receive a 100% penalty and after 20 days, there is no incentive for the employer to settle. The discretion is left to the department with an incentive to both parties to settle as soon as possible. In regards to the default judgement, the

department is allowed to enter a default order to ensure faster settlement. He told the Committee because of a change in workers' compensation, which a mutual fund outside the department, a change has been made. A bond is required by individuals owning taverns, restaurants, bars, etc. The bond will be used to pay wages due employees first, then the payroll taxes due, and no longer used to pay workers' compensation.

Proponents' Testimony:

Mike Micone, Commissioner of the Department of Labor and Industry spoke in support of House Bill 232. He told the Committee the Section the department wishes to address deals with penalty. He explained the law requires a 5% penalty per day be imposed for up to 20 days (equalling 100%). This penalty must go to the claimant. He cited a wage claim case of 93 workers against Centel filed in 1984. While the exact damage is based on the number of workers and hours, the case is still in dispute. The department believes settlement would avoid costly discovery and an extended trial. Several of the claimants have demanded the penalty. He explained the hearings officers attempt to negotiate settlements prior to the hearing. The employers are opposed to paying any penalty; and the employee, upon hearing of the 100% penalty, refused to settle for the wages owed. The process is delayed.

Opponents' Testimony:

Don Judge of the Montana State AFL-CIO spoke in opposition to House Bill 336. He told the Committee they did not aggressively oppose the entire provisions of this legislation in the House. He commented some things about House Bill 336 are very good. The department is given the authority to enter a default order which will speed up to collection of wages in the event the employer fails to respond to the wage claim being filed against him. Mr. Judge told the Committee when employees file wage claims, they file because "they're desperate for that money". He explained if the employee is due those wages; they should receive it as soon as possible. He commented he understood the department's dilemma in not having flexibility in encouraging employers to settle the issue. He stated he disagrees employees wait twenty days for wages due in order to receive a doubling of wages. He suggested rather than allow the department complete discretion in waiving the penalty, the department be allowed a reasonable period of time (first ten days after the wage claim is filed) within which they may elect to waive the penalty; and then the department shall assess the penalty at a rate of 5% per day not to exceed 100%. He explained it would allow the department time and would apply pressure to reticent employers. Mr. Judge suggested amending Page 1, Line 25 by striking the word "may" and reinsert "must"; and to add "no longer than 10 days following filing of the claim assessed against the employer, a penalty of not less than 5% per day not to exceed 100% of the wages due and owing". He told the

Committee the Montana State AFL-CIO opposes the bill in its current form.

Bob Heiser of the United Food and Commercial Workers International Union spoke in opposition to House Bill 336. He told the Committee of his opposition to leaving the penalty up to the discretion of the department. He stated in 20 years he has dealt with many wage claims. No employee has ever "drug his feet trying to get that wage claim settled".

Lars Ericson of the Montana State Council of Carpenters told the Committee no individual has "ever sat in the weeds waiting so they could collect the maximum penalty". He explained these are working people who need their money immediately. He stated he would support the amendments proposed by Don Judge of the Montana State AFL-CIO.

Questions From Committee Members:

Senator Devlin asked Mr. Judge if the Montana State AFL-CIO opposed House Bill 336 in the House. Mr. Judge told the Committee he testified against the bill in the House. He explained the bill as introduced was originally proposed to provide the penalty go to the Department of Labor and nothing was proposed on the interest. In discussion with labor organizations representing individuals involved in wage claims it was decided the legislation did not satisfy the issue even after amendments in the House.

Senator Devlin asked Mike Micone about Mr. Judge's proposed amendments. Mr. Micone told the Committee Mr. Judge had concurred with the amendments from the House. He explained Representative Simpkins offered the amendment for the proposed interest being paid to the claimant. He stated the department has received calls from claimants who have said, "I'm not going to settle that case unless I get the 100% penalty." If the employer is willing to pay the wages and a reasonable interest but will not pay to penalty, and is willing to go to court over it; and the claimant won't settle without the 100% penalty, the department is in a position of not being able to negotiate the case. He told the Committee when organized labor says their members are not "dragging their feet" it may be true. The Centel case has been since 1984 with the department attempting to resolve the case.

Senator Keating asked Mr. Micone if this bill is directed at a certain group of workers. Mr. Micone told the Committee the bill applies to all workers who feel they have not received the wages due and owing. These workers have a right to file a claim.

Senator Keating asked Mr. Micone if numbers of employees are kept as to whether individuals are in bargaining units or not. Mr. Micone told the Committee of the claims filed he could not say how many are from bargaining units and those which do not.

Senator Aklestad asked Representative Simpkins about Page 4 sub (4) in regards to bond payments and workers' compensation. He asked why the payroll "side" is paid and not the premium "side". Representative Simpkins explained the payroll side is under state control; workers' compensation is a mutual insurance company not under the Department of Labor and Industry. Mr. Micone told the Committee the provisions relates to all payroll taxes.

Closing by Sponsor:

Representative Simpkins closed on House Bill 336. He suggested an amendment which would read "at least a minimum of the New York Prime plus 2%". He told the Committee the reason the Department has entered into negotiations to recover wages is because the bargaining unit has failed. He commented the unions are not interested in bargaining. He asked the Committee if they "could turn around and get 100% interest on your money in 20 days, would you wait?" The department is acting as a mediator between the employee and the employer. The mediator needs the "tools to bargain and negotiate an agreement".

HEARING ON HOUSE BILL 342

Presentation and Opening Statement by Sponsor:

Representative Dave Wanzenried presented House Bill 342 to the Committee. The bill would require anyone involved in the construction trades industry to carry workers' compensation. It involves sole proprietors, working members of partnership, corporate officers and dependent members of employees families. Representative Wanzenried was asked to introduce House Bill 342 by the home building industry in Montana. He commented this industry has many injuries. In order to protect all involved it is necessary to require workers' compensation coverage. Currently individuals can claim themselves as independent contractors. An independent contractor by definition under workers' compensation includes two criteria: a) "has been and will continue to be free from control of direction over the performance of the service both under his contract and in fact". (Representative Wanzenried explained the "in fact" is where the problem ensues.) And, b) "is engaged in a independently established trade, occupation or professional business". He commented the problem ensues at the point of injury. He told the Committee the expression: "an employee is an independent contractor who just was injured". In the past individuals wishing to build a home decide to serve as the prime contractor and will sub-contract work out. Because they are not aware of the requirements these individuals do not insure the sub-contractors are covered. A law suit ensues as the result of an injury because in most cases small independent contractors do not carry workers' compensation coverage. The home builder assumes

these are covered. He told the Committee some individuals, purposefully, do not carry workers' compensation.

Proponents' Testimony:

Don Chance spoke on behalf of the Montana Building Industry Association in favor of House Bill 342. He explained the association is comprised of builders, sub-contractors, suppliers; principally small business; "one-man shops" and small sole proprietorships with a handful of employees. Many in the association have taken advantage of the exemption from workers' compensation coverage and, in the past, have spoke in favor of such exemptions. He explained House Bill 342 will eliminate the exemption for construction workers, hold every employer directly responsible for their insurance, including the self-employed, and established an enforcement to ensure compliance. He told the Committee the bill constitutes a joint effort among many groups and is a cooperative venture between elements of the building industry and organized labor. He commented it represents "an agonizing decision" to increase insurance policies. Mr. Chance stated construction costs will increase. This legislation is needed because this is a dangerous industry with a high accident rate and the current exemption system is not working. He commented when the uninsured are injured "law suits fly" with innocent home owners held liable as third party general contractors. Another problem being addressed is legitimate contractors having to compete against those contractors without workers' compensation insurance. Those who pay into the system carry the cost of the entire industry.

Mark Lindsay, a general contractor in the Helena area told the Committee the independent contractor exemption contained in current law is causing serious repercussions throughout the industry with sole proprietors, partners, etc. excluding themselves from workers' compensation. The escalation of workers' compensation premiums has resulted in more contractors claiming this exemption. Many general contractors are now operating without employees to avoid paying the premiums. They exempt themselves as owners and hire sub-contractors with or without exemptions. He commented if an independent contractor becomes injured he is usually awarded workers' compensation benefits because the court systems rules he was an employee. He expressed concern that the enforcement of the current law is put upon the general contractor making them liable for back premiums and medical costs of an injured individual if it is determined the individual is an employee. A home owner can be held liable if they are contracting directly with the injured party. He told the Committee there is dissention within the industry concerning this issue. House Bill 342 will be an additional cost but will not put people out of business. He commented workers' compensation should be a standard cost of doing business. He stated house Bill 342 is an "attempt by the construction industry to clean up it's own act". It eliminates the "gray area" of determining who is an independent contractor, places the burden

of liability on the one responsible for carrying insurance, and ensures all workers in the construction trades are covered.

Gene Fenderson representing the Montana State Building and Construction Trades unions (eleven different international union across the state of Montana) spoke in support of House Bill 342. He commented the construction industry is facing problems. He explained it is "out of hand" and is part of the "underground economy". He told the Committee as times "got tough" everyone became an independent contractor. He stated House Bill 342 is good cooperative legislation from both management and labor.

Bob Ross representing Robert W. Ross Construction, Flathead Building Association told the Committee Robert W. Ross Construction has been in the industry, primarily in the Flathead Valley, for the last 35 years. He explained for 33 years workers' compensation was carried on family members and corporate officers. He commented House Bill 342 will not put someone out of business. During the 33 years all employees were covered. Private insurance is carried on the corporate officers. He told the Committee he would lose the private insurance if the company returns to the state plan. A "sacrifice" he is willing to make. The current exemption system is not working. There are no limit on how far back the claim can go. A worker could be injured on another job and file a claim against a current employer. Individuals working in the industry in partnership may claim an exemption. He explained in reality they are not exempted if it were to be tested in court. He cited an example of a painter in Kalispell (a "five-man operation) who pays 7% of the painting pool in the state workers' compensation fund. Mr. Ross stated costs will be raised. He will have to pay 18%. He commented business and labor have worked hard together on House Bill 342 and urged support.

Chuck Hunter of the Montana Department of Labor and Industry told the Committee the department is responsible for determining who is an independent contractor and who is not. He explained most independent contractor determinations arise after the fact and typically deal with an injured party wishing to claim workers' compensation benefits or an individual losing their employment wishing to claim unemployment benefits. Mr. Hunter stated the department would no longer have to make such determinations after the fact.

Jacqueline Terrell representing the American Insurance Association spoke in support of House Bill 342. She explained the companies she represents are going to (to the extent that a risk is covered by insurance) cover that risk, regardless. She commented the question is whether this is covered by workers' compensation insurance or general liability insurance. She told the Committee every employee has the right to be covered by workers' compensation insurance; and House Bill 342 places to responsibility of obtaining the insurance on the appropriate entity; and places the risk, being insured, in the appropriate

line of insurance. She commented the companies she represents write 30% of the property/casualty insurance in Montana; and 54% of the workers' compensation insurance written by private companies. She cited a technical problem with the definition of construction trades. She explained other legislation being considered which also deal with a definition of a construction trade as it relates to workers' compensation insurance. She suggested all legislation use the same definition.

Tom Tillo, a member of the Helena Home Builders Association told the Committee he would like "to see everybody in the same boat". The exemptions "hold no water". He pointed out the enforcement is the key. He commented he hopes House Bill 342 will be a viable protection for the worker; and if not abused, a tool to assist bona fide contractors to bid on projects on a equal basis.

Jim Carras representing the Missoula Home Builders Association and Carras Cabinet Company told the Committee in the cabinet business a general contractor will contact his company for an individual to install cabinets. He cited a example. A finish carpenter gets assistance in installing the cabinets from a friend. A cabinet falls on the friend who is not covered by workers' compensation, and a law suits ensue. Under the current law a general contractor or home owner is placed in the position of policing whether or not a worker on the job has proper insurance.

Richard Ream of Bozeman and former President of the Home Builders Association told the Committee they represent a 170 members of which the majority supports House Bill 342. Mr. Ream explained he wants to cover his four employees and all others he does business with should be responsible for their own insurance.

Bob Murphy, Business Manager of Local 185 of the International Brotherhood of Electrical Workers spoke in support of House Bill 342.

Frank Armbrecht of Valley Paint and Glass in Bozeman told the Committee he has been operating as a sub-contractor for 14 years. He spoke in support of House Bill 342.

David Steen, owner and operator of Steen Builders Property Improvement Company in Great Falls and Vice President of the Great Falls Home Builders Association spoke in support of House Bill 342.

Don Judge of the Montana State AFL-CIO spoke in support of House Bill 342 from prepared testimony. (Exhibit #2)

<u>Opponents' Testimony:</u>

Jay Gifford of Gifford Refrigeration spoke from prepared testimony in opposition to House Bill 342. (Exhibit #3)

Dave Raymer, a sole proprietor spoke in opposition to House Bill 342. He told the Committee House Bill 342 would require all in the construction industry be covered by workers' compensation, therefore increasing workers' compensation revenues. He pointed out Montana law "demands workers' compensation coverage is out there", but enforcement at this time is not there. He commented 50% of his peers are not covered with any workers' compensation program. He stated basing the rate on a yearly income is a problem. He questioned who would determine what the quarterly wage is going to be. He told the Committee he excluded himself from coverage approximately two years ago. Every quarter, even electing the minimum ($2700), his payments were $320 per quarter for workers' compensation. He explained most of his income is generated during a two-quarter period of the year; and seldom does his annual income match the four-quarter minimum established. He expressed another concern. House Bill 342 will cause a loss of benefits from private disability insurance programs which sole proprietors are entered into. He told the Committee he could not afford two policies. He explained his private disability program is not as good as workers' compensation but costs 1/3 as much. He will receive a full refund on premiums if no claims are made over a period of time. If House Bill 342 becomes law and all sole proprietors are covered, he questioned why should "unjust taxation be allowed when sole proprietors work together". He explained he would be required to cover himself and all sole proprietors he were to hire. As a sole proprietor he works approximately 30% to 40% of the time alone. He explained, from past experience, the witness portion to the accident report has been a problem area.

Buddy Lundstrom, a plumbing and heating contractor from Malta told the Committee not every person injured on the job files a claim against the general contractor. He told the Committee if the system's problems "can be taken care of" and the rates become affordable, he would use the workers' compensation system. He explained he chooses to carry his own insurance. He asked the Committee to consider the "small guy", the person who does not have several employees. He asked how the rates would be determined and differentiated; he "works with the tools" and works in his office.

Brad Kalberer presented the Committee with letters of opposition to House Bill 342 (Exhibit 4(a) through 4(s)). He commented the consumer "doesn't have any more money" if the costs of workers' compensation were to be passed on.

Bernie Connor spoke in opposition to House Bill 342 from written testimony. (Exhibit #5)

Questions From Committee Members:

Senator Devlin asked Representative Wanzenried about Page 9 which refers to cosmetologists and barbers. Representative Wanzenried told the Committee on Page 9, Lines 10 and 11, an

attempt to amend existing law and inadvertently exempted individuals who should be covered. The language was convoluted in the 1985 and 1987 sessions. He explained this is a recodification of that language.

Senator Aklestad pointed out there were no effective date. He commented the Fiscal Note makes an assumption. He asked if the law would go into effect on October 1. Representative Wanzenried told the Committee this was correct.

Senator Aklestad asked why the Fiscal Note did not contain a monetary amount. He suggested if 1068 employers who would possibly be involved; and assuming these were single employers with $3,000 worth of workers' compensation could be approximately $3 million. He asked Representative Wanzenried what House Bill 342 would raise ($5, $6, $7, $8 million). Representative Wanzenried told the Committee, as they are well aware, he was "not sure how any of these fiscal notes were prepared". He commented he was not suggesting he agrees with all the assumptions. He would not refute Senator Aklestad's suggested figures, and was not "in a position to refute what is in the fiscal note either".

Closing by Sponsor:

Senator Wanzenried closed on House Bill 342. He told the Committee House Bill 342 is a major policy decision representing on the part of the industry (perhaps not unanimously in support of the legislation), a effort to "clean up its act". He explained there is not a effort being made to "bail out the fund". House Bill 342 has no bearing on improving the solvency of the fund. He explained in establishing relationships on job sites, they are fluid. Those relationships are clarified in House Bill 342.

HEARING ON HOUSE BILL 356

Presentation and Opening Statement by Sponsor:

Representative Gary Beck told the Committee House Bill 356 would make a simply clarification in Montana law regarding the appointment of labor members to the Board of Personnel Appeals. It would mandate the labor representatives of the board be full-time employees or elected officials of a labor union. It would assure a balance to the Board of Personnel Appeals.

Proponents' Testimony:

Gene Fenderson of the Montana Building and Construction Trades Union spoke in support of House Bill 356. Mr. Fenderson told the Committee the bill would give the Governor clear direction from the Legislature as people serving as employee representatives (either full-time employees or elected officials of a labor union). He explained other amendments being proposed

would say two members from each side have to vote the interest of the organization they are representing. He told the Committee he disagrees. He commented he wishes to have five professional people, two from labor who under the rules, two from management who understand the rules, and a neutral who can hear the cases and facts. If all five wish to vote in any given direction they should be allowed to do so.

Don Judge of the Montana State AFL-CIO spoke in support of House Bill 356 from prepared testimony. (Exhibit #6)

Phil Campbell of the Montana Education Association spoke in support of House Bill 356. He told the Committee it is clear individuals with experience are needed. He explained the most recent appointee to the board representing labor is a retired kindergarten teacher. He commented it is possible a retired kindergarten teacher could be an expert in labor. She was a member of MEA; but being a member does not make one an expert in labor relations.

John Malee of the Montana Federation of Teachers and the Montana State Employees spoke in support of House Bill 356.

Bob Heiser of the United Food and Commercial Workers Union spoke in support of House Bill 356.

Opponents' Testimony:

Laurie Ekanger, Administrator of the State Personnel Division, representing the State Department of Administration told the Committee nothing in the law prohibits union professionals from being put on the board. She explained the language is narrowly written for union professionals on the board. The unions the state deals with do not have large staffs, consequently the union professionals serving on the board are probably the same ones they are having disputes with. She stated in the past this has been the case. Ms. Ekanger proposed an amendment (Exhibit #7) in order to make the language as specific for the management side of the board.

Juanita Kajkowski spoke in opposition to House Bill 356 from prepared testimony. (Exhibit #8)

Barbara Wolfe spoke in opposition to House Bill 356 from prepared testimony. (Exhibit #9)

Bob Mulland of the Department of Labor and Industry spoke in opposition to House Bill 356 and questioned the need for the bill. He commented most decisions are not "border line decisions"; most are 5-4 decisions. (Mr. Mulland did not sign the Visitor's Register but his testimony is entered here.)

Questions From Committee Members:

NONE.

Closing by Sponsor:

Representative Beck closed on House Bill 356 and requested Senator Doherty to carry to the Senate.

HEARING ON HOUSE JOINT RESOLUTION 13

Presentation and Opening Statement by Sponsor:

Representative Mary Ellen Connelly told the Committee House Joint Resolution 13 expresses opposition to the rail roads being included in Montana workers' compensation. These workers are presently covered by the Federal Employees Liability Act (FELA) which has been in existence for over 80 years. Montana workers' compensation could not handle the accountability of the accidents particular to rail road workers. Railroads carry chemicals and hazardous materials. She explained it would be costly. In one year there were 47,000 accidents.

Proponents' Testimony:

Jim Mular, Chair of the Montana Joint Rail Labor Legislative Council spoke in support of House Joint Resolution 13. Mr. Mular presented the Committee with written testimony and handouts. (Exhibit #10)

Don Judge of the Montana State AFL-CIO spoke from prepared testimony in support of House Joint Resolution 13. (Exhibit #11)

Michael Sherwood, representing the Montana Trial Lawyers Association spoke in support of House Joint Resolution 13. He told the Committee he worked on the railroad from 1969 to 1976. He commented "the BN is a company which would be happiest if it only had managers and no employees".

Rick Van Aken, Legislative Representative for Local 728 of the Transportation Communication Union asked by telephone to be entered into the record as in strong support of House Joint Resolution 13.

Opponents' Testimony:

Fred Simpson, Executive Vice President of the Montana Rail Link told the Committee resolutions are often thought to be unimportant. Montana Rail Link feels HJR 13 is "the most important piece of legislation the Montana Legislature is considering this year". He explained it deals with a large amount of money but money is not the issue. The issue is a basic industry problem the resolution addresses: "the war between

labor and management". He commented this has to end. He told the Committee it is an adversary system; a negligent system which forces the employee to prove the railroad was negligent. It is a comparative negligent system which requires the railroad the employee is negligent and contributed to his injury. He explained it is a system which uses the litigation of the federal court system and takes from four to five years to resolve a case. He suggested getting to a system which all of the rest of industry in the United States has gotten to: a no fault system. There would be no need to prove the railroad was negligent to be compensated. The railroad would not need to prove the worker was negligent. He stated a system is needed which says "if a person is injured while working on the railroad he ought to be compensated; and he ought to be compensated right now". He expressed his amazement the AFL-CIO is saying a "negligent system is what they want". He explained this is going backwards. He told the Committee there are technical problems with FELA. It is unpredictable because it is a court system. He explained there are some "horrible decisions". If an individual is badly hurt, goes to trial, and it is discovered he violated a "couple of rules", he "doesn't get a penny" with society paying the costs. Another extreme in which to employee is awarded millions of dollars with the railroad and its rate payers picking up to costs. There are a "bulk of cases in the middle" which go through the adversary process. The problem in these cases is the system is inefficient. The plaintiff's attorney receives 25% to 33%, the railroad's attorneys receive 10% to 15%, and the injured individual receives the balance. He explained there are no problems across states for truckers or airline companies. He commented FELA does not cause railroad to be safe. He suggested the answer may be for workers to be included in a state workers' compensation, or a federal workers' compensation program, or something else. He asked the message that FELA is good system not go to the President and Congress. He stated FELA is a bad system.

Pat Keim, Director of Public Affairs for Burlington Northern told the Committee Mr. Simpkins addressed the subject well and his "sentiments echo" Mr. Simpkins.

Questions From Committee Members:

NONE.

Closing by Sponsor:

Representative Mary Ellen Connelly closed on House Joint Resolution 13. She stated Montana Rail Link has had numerous accidents and have been consistently negligent in handling their equipment. FELA does allow railroad workers who suffer job related injuries to sue for damages. In 1988, Congress wrote to Mr. Robinson, director of Workers' Compensation asking if they objected to being included. Mr. Robinson stated Montana could not afford to have to railroads as part of the program. She

explained this is shifting the workers' compensation administrative costs from the rail industry to the public taxpayers.

ADJOURNMENT

Adjournment At: 5:15 p.m.

Thomas E. Towe

SENATOR THOMAS E. TOWE, Vice Chairman

Linda Casey

LINDA CASEY, Secretary

TET/llc

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 3/7/91

____ LEGISLATIVE SESSION ____

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P		
SENATOR MANNING			E
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		
Senator Doherty	P		

Each day attach to minutes.

MONTANA
PUBLIC
EMPLOYEES
ASSOCIATION

1426 Cedar Street • P.O. Box 5600
Helena, Montana 59604
Telephone (406) 442-4600
Toll Free 1-800-221-3468

HB 232

HB 232 amends 44-1-901 MCA to allow a Highway Patrol Officer who has been suspended, demoted or discharged to appeal the action through the grievance procedure of a collective bargaining agreement if the officer is covered by a collective bargaining agreement. Officers who are not covered by a collective bargaining agreement will continue to appeal such action to the district court.

This bill would provide Highway Patrol Officers with the same rights as all other state employees covered by a collective bargaining agreements and take away the confusion of which procedure is used for which grievances. At the present time all grievances except suspension, demotion or discharge are subject to the contract grievance procedure.

Another advantage of the passage of this bill would be the possible relief of some of the overworked courts.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 3/7/91
BILL NO. HB 232

Eastern Region
P.O. Box 22093
Billings, MT 59104
(406) 245-2252

Western Region
P.O. Box 4874
Missoula, MT 59806
(406) 251-2304

MPEA

HOUSE BILL 232

REMEMBER:

HB 232 does not change or interfere with the Attorney Generals's right to suspend, demote or discharge. It does not take away his right to appoint who ever he wants as a hearings officer.

It simply provides that after the Attorney General has made his decision, the Highway Patrol Officer will have the right to appeal through " grievance resolution provision " of the collective bargaining agreement. This is the same right and same process every other state employee covered by a collective bargaining agreement has.

The appeal will not go back through the entire grievance process. It will go to the final step which is the " grievance resolution ".

A collective bargaining agreement is the result of bargaining between both parties so the appeal process is not a process that the Attorney General does not have a say in.

Let's relieve our courts and put these kinds of issues where they belong. That's in the collective bargaining process not the district court process,

MONTANA STATE AFL-CIO
APRIL 29 1956

DONALD R. JUDGE
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

Testimony of Don Judge on House Bill 342 before the Senate Labor and Employment Relations Committee, March 7, 1991.

Mr. Chairman and members of the Committee, for the record I am Don Judge, here to testify on behalf of the Montana State AFL-CIO in support of House Bill 342.

As the sponsor has described to you, this bill would mandate workers' compensation coverage for independent contractors engaged in a construction trade.

We find some irony in this bill, as it hasn't been too long ago that independent contractors were vying to remove themselves from the requirements of mandated workers' compensation coverage. The argument used then was that these individuals were people who should be excluded because:

1. They were free from control or direction over the performance of their services, and

2. They were engaged in an independently established trade, occupation, profession or business.

Now we find that these individuals are realizing the necessity of having workers' compensation protection in the dangerous occupations of the construction industry.

Mr. Chairman, members of the Committee, it has always been our belief that workers in any occupation should be afforded the protections of medical costs incurred and stop gap provisions for lost wages as a result of on-the-job injuries. We are highly supportive of the efforts of these independent contractors to mandate workers' compensation protection in this industry.

In addition, we also see a positive impact in passing this legislation on good contractors already providing workers' compensation protection for their workforce. House Bill 342 should level the playing field for these contractors with those contractors who deny this basic protection when bidding for construction jobs.

We urge this committee to give House Bill 342 a do pass recommendation.

Thank you.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 3/7/91
BILL NO. HB342

PRINTED ON UNION MADE PAPER

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 7 day of March, 1991.

Name: Jay D. Gifford

Address: 1058 W 22nd Ave

Havre, MT

Telephone Number: 265-1594

Representing whom?

Havre Area Contractors

Appearing on which proposal?

HB 342

Do you: Support?____ Amend?____ Oppose? X

Comments:

See Enclosed Info Pc

① Personal Statement Sheet

② Signature Sheet From Hill Co. Contractors

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3

DATE 3/7/91

Gentlemen,

When HB342 reached the House floor for the final vote, my Representati told me that it was said to be supported by the contractors in Montana I don't know which contractorsgave testimony at the House hearing, but I'm hear to tell you that I've talked to most of the contractors in my area of this great state and NOT ONE.....NOT ONE was in favor of this Bill.(and some of them carried the Optional coverage.)

I'm in the Refrigeration Trade and we've got many problems at the present time trying to keep up with the national changes in regards to our Freons. I'm sure that the other contractors in their respective feilds have problems that they have to deal with too.That is why we don't need these additional burdens added to our business lives.

I stopped and calculated that my Deposit to the Fund would be $3340.00 per year. I don't pay into the program now, but I also don't make claims against it.It's a chance I take, and I take it willingly with my eyes wide open. I can take that $3300.00 and use it to buy more extensive medical coverage or I can invest it in some sort of retirement plan like an IRA. If I'm forced to buy the States Policy, the only way that I'll ever see that money again is if I get injured.That, in my opion is a poor sitatuation at best.That money comes out of my profits and I want a say on how it's spent.

If the larger contractoes in the state are haveing problems with their subs. making claims on their Workmans Comp. coverage,they should work within the laws that already exist and require them to either provide workmans comp. coverage on a job by job basis, or submit a certificate of exemption that will let everyone know that they have no coverage on themselves. If that doesn't keep claims from going against them; that's the LOOP HOLE that needs to be closed

not strapping the self-employed contractors in the state with mandatory coverage.

Gentlemen... a Self-employed Bussiness person should have control over how his/her business is run. We already have too many regulations telling us how we should operate. This is a matter for us to decide, and if left as an option, that's where the decision will be made. I'd like to see laws passed that encourage Expansion, Ingenuity, and Ambition, not ones that load us down with more burdens.

Until further notice these are my dollars your trying to take, This is a blatant attempt to bail out this troubled program by throwning more dollars at it. THESE ARE NOT YOUR DOLLARS... THEY'RE MY DOLLARS, AND YOU'RE NOT ENTITLED TO THEM! ~~Not so unless this~~ At least not yet ..... it has to become law first.

Thank You for listening

MCA 39-71-405 Subsect (11) Could be Amended - So that Anyone who is exempted is bound by that Exemption And CAN NOT Recover under Any other Policy

LET IT BE KNOWN THAT THE OWNERS OF THE BUSINESSES LISTED BELOW ARE OPPOSED TOTALLY WITH HB342. WE DO NOT WANT THE OPTION TO COVER OURSELVES TAKEN AWAY FROM US, SO WE ARE FORCED TO BUY THE COVERAGE THAT IS OFFERED BY THE STATE. WE FEEL THAT THE DECISION OF COVERAGE ....AMOUNT OR TYPE....SHOULD BE OURS AS BUSINESS OWNERS.

DATE	OWNER'S SIGNATURE	BUSINESS NAME (PRINTED) or COMPANY STAMP
3-4-91	Don R. M	Modern Aire, Inc. 1521 Highway #2 East Havre, Mt. 59501
3-4-91	Brad Sutton	LOTTON Construction P.O. Box 1656 Havre, MT 59501
3-4-91	Brian Dell	DELL'S GLASS 933 1ST HAVRE, MT. 59501
3-04-91		Tempco Electric Bx1633 - 210 6th Ave Havre, Mt 59501
3-4-91	Lynda Patrick Hayes	Patrick Construction, Inc. 1725 E. Main Havre, MT 59501
3-4-91	Dennis Dittloff President	T.P. Construction, Inc. P.O. Box 591 HAVRE, MT 59501
3-4-91	Ramona Lokken Sec Treas.	Bear Paw Lumber PO Box 950 Havre, Mt 59501
3-4-91	J. J. Sluter Sec	M M J. Const. & R E P.O. Box 149 Havre, Mt 59501

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DATE	OWNER'S SIGNATURE	BUSINESS NAME (PRINTED) or COMPANY STAMP
3-4-91	John J. Hansen	Hansen's Sh[illegible] and Roofing Box 390 Havre - Mont. 59501
3-4-91	Luther Stuber	P.O. Box 146 STUBER PLBG. & HTG. Inc 114 W. 2ND ST. PH: 265-9020 HAVRE, MT. 59501
3-4-91	[signature]	NAULT PLUMBING P. O. Box 1086 Havre, MT 59501
3-4-91	Jay D Gifford Pres.	GIFFORD REFRIGERATION INC. 1058 22nd A/E. W. BOX 49 HAVRE, MONTANA 59501
3-5-91	Gy C Dumond	Havre Point Shop Box 384 Havre MT. 59501

To the Honorable

It has come to my attention that House Bill #342 will be going to committee at approximately 1:00 P.M., Mar.7, 1991. This bill will require mandatory carrying of State Workman's Comp on anyone engaged in the Construction trades. I am opposed to this bill for the following reasons:

1. The increaed cost would obviously have to be passed on to the customer, and this increase in a recessionary economy would only add to the difficulty many people are already experiencing financially, forcing them to postpone or eliminate needed work.

2. Many of the small ONE PERSON BUSINESSES, who because of the economy, could be forced to close their doors due to the increased overhead cost, and have to seek employment elsewhere.

Finally, the questions I have are:

1. What is the exact purpose of this legislation?

2. Is it a way of increasing revenue to the State Fund? (In essence another hidden tax.)

3. Is there actually a problem with Contractors making excessive claims, or is someone trying to fix something that isn't broke?

Personally, I see this as a great way to force many small business owners out of business, and discourage the formation of new ones! I strongly urge you to vote against this bill.

Sincerely,

Barb Kalberer

Br J Heating

Sidney MT

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4(a)
DATE 3/7/91
BILL NO. HB342

To the Honorable

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Sincerely,

Maurin Eller

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4(6)
DATE 3/7/91
BILL NO. HB 342

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Sincerely,

Jose Const Co.

Raymond T. Jose Pres

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4(e)
DATE 3/7/91
BILL NO. HB 342

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Sincerely, Craig L. Arnett

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4 (a)
DATE 3/7/91
BILL NO. HB 342

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Personally, I see this as a great way to force many small business owners out of business, and discourage the formation of new ones! I strongly urge you to vote against this bill.

Sincerely,

Teresa M. Manix

482-7169

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4(e)
DATE 3/7/91
BILL NO. HB 342

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Sincerely,

Randy Krugen 2/28/91

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4(f)
DATE 3/7/91
BILL NO. HB342

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Sincerely,

3/1/91

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4(9)
DATE 3/7/91
BILL NO. HB 342

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Personally, I see this as a great way to force many small business owners out of business, and discourage the formation of new ones! I strongly urge you to vote against this bill.

Sincerely,

Wayde Madison

406-482-4865

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4(h)
DATE 3/7/91
BILL NO. HB342

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Sincerely,

Ed LaRue 482-7169

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4 (i)
DATE 3/7/91
BILL NO. HB 342

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Sincerely, Tom L Martin

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4(j)
DATE 3/7/91
BILL NO. HB 342

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Personally, I see this as a great way to force many small business owners out of business, and discourage the formation of new ones! I strongly urge you to vote against this bill.

Sincerely,

Tim Ivarra
Savage Paint.
Rt 2 Box 2621
Sidney, MT 59270
482-1928

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4(K)
DATE 3/7/91
BILL NO HB342

To the Honorable

It has come to my attention that House Bill #342 will be going to committee at approximately 1:00 P.M., Mar.7, 1991. This bill will require mandatory carrying of State Workman's Comp on anyone engaged in the Construction trades. I am opposed to this bill for the following reasons:

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Sincerely,

Brenda Jansen
Rt 2 Box 2621
Sidney, Mt 59270
406-482-1928

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4(1)
DATE 3/7/91
BILL NO. HB342

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Sincerely,

Sybil Bateman

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4(m)
DATE 3/7/91
BILL NO. HB342

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Personally, I see this as a great way to force many small business owners out of business, and discourage the formation of new ones! I strongly urge you to vote against this bill.

Sincerely,

Roger Bryan
B+B Builders
318 W Main
Sidney MT
482-4035

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4(n)
DATE 3/7/91
BILL NO. HB 342

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Sincerely,

Mary Ruth Cinkemi.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4 (o)
DATE 3/7/91
BILL NO. HB 342

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Sincerely,

Bill Laberg Pres.
Laberg Heating + Cooling

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4(p)
DATE 3/7/91
BILL NO. HB342

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Personally, I see this as a great way to force many small business owners out of business, and discourage the formation of new ones! I strongly urge you to vote against this bill.

Sincerely,

Craig L. Solberg V.P.

Solberg Heating & Cooling Inc.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4(9)
DATE 3/7/91
BILL NO. HB 342

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Sincerely,

SIDNEY MT.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4(r)
DATE 3/7/91
BILL NO. HB342

Dick Manning
Chairman
Labor & Employment
Relations Committee

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4(5)
DATE 3/7/91
BILL NO HB 342

We have been told the main reason for writing HB 342 is to protect general contractors from subcontractors who own and operate their own business and have elected to not have workman's comp coverage from applying for coverage under the general contractors policy when injured on the general contractors job.

Administration costs will have to increase due to this bill. To monitor the construction trade and insure that all subcontractors and business owners are covered will take a tremendous amount of manpower. most business owners work at all phases of operating a business, sales, clerical, delivery, installation, bookeeping, etc. How will they be fairly rated and who will make the decisions? This will also cause administrative problems and expenses.

Wouldn't it be simpler, more cost effective and much wiser to pass legislation stating that any approved subcontractor or business owner who has elected not to have workman's comp. coverage cannot receive workman's comp. coverage from any general contractor's policy or any other source under any circumstances - period! No questions asked! This may be way too practical, but maybe it's time we start operating our workman's comp. program in a practical manner.

We'll never hear this admitted, but certainly another reason for this HB must be that its author(s) think they have created a revenue generator to help bail out the workman's comp. program. On the contrary, we feel this will have a major negative effect on the

finances of the workman's comp. program. Workman's comp. relies somewhat on the employer's report to verify if, in fact, an employee's injury did occur on the job and if it is a legitimate claim. If we force a business owner to unwillingly buy workman's comp. for himself, we have no one to rely on to verify his claims for himself except him (remember, he's the boss). Do you think he will hesitate to take advantage of his coverages? How about the owner of a seasonal business who has been unwillingly forced to buy workman's comp. coverage for himself, who sees things slowing down and decides to get some of his premiums back by drawing compensation through a false claim during his slow time. This sort of thing will happen and will result in further financial disaster for the State Fund.

Until we trim administrative costs and eliminate litigation from the State Fund program, we will continue to see it operate in the red. As long as we have lawyer's involved in settling claims, we would still go backwards. Let's set concrete rates for certain injuries and illnesses. Employees can sign waivers agreeing to the rates as set by the State Fund, and if an accident does occur, they're covered under those terms period. No lawyer fees, no administration cost, no litigation. The employee knows where he stand. We, as employers, know where we stand and eventually the workman's comp. mess may be cleaned up.

Please, let's do all we can to see HB 342 fail. It's not for the good of anyone!! By trying to solve one small problem, It creates untold other problems.

Craig L Averett

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 7 day of March, 1991.

Name: BRAD KALBERER

Address: Box 823 Sidney

Telephone Number: 406 482 4744

Representing whom?

Independent Contractors of MT

Appearing on which proposal?

HB 342

Do you: Support?____ Amend?____ Oppose? X

Comments:

Small Business + Consumers would be financially hurt

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

From the Desk of Bernard Connor
Independent Contractor
House Dist 22 / Senate Dist 11

Dear Legislator,

I have arrived in Helena with exciting news for you and your esteemed colleagues!

Through nothing more than diligence and even a little guidance from God, I have created a plan that will cover all of your insurance needs from this point forward until at least the turn of the fiscal quarter.

Specifically, myself and four fellas at the coffee shop evaluated your continuing needs as a governing body and developed something which we call House Bill 342. Our contract can be negotiated later, but here are the highlights:

1. As your potential insurance carrier we are on the brink of insolvency and present this plan as little more than an opportunity to remain in business through the next month.

2. You realize that we are incredibly interested in outside matters including gambling and the University System (all 6 schools). Therefore we will adhere to our past policies of ignoring dead-beats and the ingenious alike who find methods of working around and within the insurance system to their own advantage. We're certain this fact excites you as much as it does us.

3. Likewise, we have taken great pains to assure our policy holders that they will never have to deal with the maddening procedures of questioning the finer points of our coverage. In fact, we go so far as to discourage such insubordination. You'll be pretty hard pressed to find that with any of our competition.

4. As I mentioned earlier, our group is on the brink of insolvency and cannot truly promise that all claims will be either addressed or processed. By purchasing our premium plan, you double your chances of having no redress whatsoever. Like I said, this is indeed a very exciting offer.

5. As your insurance carrier, I'm sure you recognize the fact that we are diligently searching for any quick fix which keeps us afoot. We know you can appreciate these efforts. We hope that you'll go so far as to admire our approach.

We're so convinced, ourselves, that we have the best offer before you that we've gone so far as to relieve you of the agitating need to decide this issue for yourselves. In fact, we have undermined your desires so far as to coerce you into compliance. Beginning with the new fiscal year, you'll be receiving our initial policy complete with an invoice to be paid in full. We can't thank you enough for your blind faith and your continued support.

As always, if you have any questions or comments regarding this issue, be certain to drop me a line at your convenience. But, don't forget about the new postal rates, we'd sure hate to see your greviences arrive with postage due.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5
DATE 3/7/91
BILL NO. HB 342

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 27 day of MARCH, 1991.

Name: BERNIE CONNOR

Address: 216 7TH AVE SE

SIDNEY MT 59270

Telephone Number: 482-2424

Representing whom?

CONNOR MASONRY

Appearing on which proposal?

HB 342

Do you: Support?____ Amend?____ Oppose? X

Comments:

SMALL BUSSINES NEEDS HELP NOT BURDENS

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 7 day of March, 1991.

Name: Buddy Lundstrom

Address: Box 1119 MALTA, MT 59538

Telephone Number: 406 654-1041

Representing whom?

MALTA pls & HTC

Appearing on which proposal?

House bill 342

Do you: Support?____ Amend?____ Oppose? X

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 7 day of MARCH, 1991.

Name: DAVID L. RAYMER

Address: 5820 SUNSET RD

HELENA, MT. 59601

Telephone Number: 442-4901

Representing whom?

LOG STRUCTURES BY RAYMER

Appearing on which proposal?

342 (SELF EMPLOYED MANDATORY WORKER COMP)

Do you: Support?____ Amend?____ Oppose? ✓

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

MONTANA STATE AFL-CIO
APRIL 29 1956

DONALD R. JUDGE
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

Testimony of Don Judge on House Bill 356 before the Senate Labor and Employment Relations Committee, March 7, 1991

Mr. Chairman and members of the committee, for the record I am Don Judge, and I am here today to testify on behalf of the Montana State AFL-CIO in support of House Bill 356.

This bill would make a simple clarification to Montana law regarding the appointment of labor members to the Board of Personnel Appeals. The requirements of House Bill 356 would mandate that the labor representatives on this board be either full-time employees or elected officials of a labor union or association.

Although this somewhat restricts the field of potential appointees, we believe that past history of appointments mandates something be done to return the balance to a board which has significant power to impact and influence labor relations in the state of Montana.

Under current law, two members of this five member board are required simply to have had "experience as a member or employee of an employee organization". This has allowed for board members to come from the ranks of management based upon previous membership or experience in an employee organization, or bargaining unit.

We believe that the drafters of the law providing for the Board of Personnel Appeals never intended for this to happen, and we would urge your support in adopting House Bill 356 to return a balance to a regulatory board so important to workers and their organizations in our state.

Please give House Bill 356 a do pass recommendation.

Thank you.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 6
DATE 3/7/91
BILL NO. HB 356

PRINTED ON UNION MADE PAPER

Amendments to House Bill No. 356
Third Reading Copy

Requested by the Department of Administration
For the Committee on Labor and Employment Relations

Prepared by Laurie Ekanger
March 6, 1991

1. Page 1, lines 22-23.
Following: "two members"
Strike: ", each having management experience involving collective bargaining"
Insert: "who are full-time management employees in organizations with collective bargaining units or who represent management in collective bargaining activities"

2. Page 2, line 7.
Strike: "represented by their experience"
Insert: "of the organizations they represent"

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 3/7/91
BILL NO. HB 356

March 7, 1991

Senators:

My name is Juanita Kajkowski. I am a former Montana Public School teacher of sixteen years. I was raised in Montana in a family of democrats. My first experience with the board of personnel appeals was in 1983 as a religious objector to compulsory union membership and support. Since then I have attempted to keep track of the cases of other such objectors.

I am opposed to House Bill 356 for three reasons:

1. It creates a conflict of interest.

2. It gives an unfair advantage to organized labor for communication and advice on issues and pending decisions.

3. The appeals board presently tends to favor organized labor.

It creates a conflict of interest. Our present law 2-15-1705 is quite sufficient. It clearly states under (b) All members of the board shall serve as impartial decision makers and are not appointed to serve the interests represented by their experience. With House Bill 356 two full-time employees or full-time elected officials of a labor union or association would be appointed. These people would definitely have loyalties and prejudices. They would have a very difficult if not impossible time refraining from serving their unions' interests. Certainly the board members should understand and empathize with the viewpoints, needs, and laws of their experience area but should maintain impartiality. The present law provides for this.

House Bill 356 gives an unfair advantage to organized labor. It would be very easy for the union/association appointee to provide information about opinions, status of appeals, etc. to unions since the appointees would still have an intimate connection with their union. The appointees would also easily get advice from their union on how to rule on issues before the board of appeals.

The board of personnel appeals presently tends to favor organized labor. Although I know the board deals with a multitude of types of cases, I am most familiar with 39-31-204 which deals with an employee's right of non-association. In 1983 I was denied a hearing under this law. In 1985 the wording and intent of that law was changed. The board has treated this law as if there were never any changes.

For these three reasons the people of Montana would be better served by no changes in Montana Law 2-15-1705.

Thank you for your time.

Sincerely,

Juanita Kajkowski

Juanita Kajkowski

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 8
DATE 3/7/91
BILL NO. HB 356

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 7 day of March, 1991.

Name: Juanita Kajkowski

Address: Box 415, Deer Lodge, Mt. 59722

Telephone Number: 846-1315

Representing whom?

Juanita Kajkowski

Appearing on which proposal?

HB 356

Do you: Support?____ Amend?____ Oppose? X

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

March 7, 1991

Senators:

My name is Juanita Kajkowski. I am a former Montana Public School teacher of sixteen years. I was raised in Montana in a family of democrats. My first experience with the board of personnel appeals was in 1983 as a religious objector to compulsory union membership and support. Since then I have attempted to keep track of the cases of other such objectors.

I am opposed to House Bill 356 for three reasons:

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3. The appeals board presently tends to favor organized labor.

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The board of personnel appeals presently tends to favor organized labor. Although I know the board deals with a multitude of types of cases, I am most familiar with 39-31-204 which deals with an employee's right of non-association. In 1983 I was denied a hearing under this law. In 1985 the wording and intent of that law was changed. The board has treated this law as if there were never any changes.

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Thank you for your time.

Sincerely,

Juanita Kajkowski

Juanita Kajkowski

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 8
DATE 3/7/91
BILL NO. HB 356

Barbara R. Wolfe
4750 Valley Drive
Helena, MT 59601
Teacher, Helena Public Schools
March 7, 1991

Testimony in opposition to HB 356

I oppose the proposed changes in Section 2-15-1705 MCA. To insist that two members of the Board of Personnel Appeals be full-time employees or elected officials of a labor union negates another section of the original law which states that all members of the board shall serve as impartial decision-makers and are not appointed to serve the interests represented by their experience.

In a normal court of law a jury of peers is selected supposedly consisting of people who are not biased towards the defendant. To put two elected officials of a labor union on the board would certainly not allow for impartiality.

Why do union interests have to load the deck? What's wrong with two members who just have experience as members or employees of an employee organization?

I am not a member of the Helena teachers' union, but certainly I have experience as a teacher and I could represent our employee organization, probably with more impartiality than those who need the union to help them make their decisions.

If this proposed bill becomes law, appealing to the Board of Personnel Appeals will be an exercise in futility.

Barbara R. Wolfe

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 9
DATE 3/7/91
BILL NO. HB356

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 7 day of March, 1991.

Name: BARBARA R. WOLFE

Address: 4750 VALLEY DRIVE
HELENA MT 59601

Telephone Number: 227-5730

Representing whom?

SELF

Appearing on which proposal?

HB 356

Do you: Support?____ Amend?____ Oppose? X

Comments:

PLEASE SEE ATTACHED COPY OF TESTIMONY

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

AMERICAN FEDERATION
OF LABOR AND CONGRESS
OF INDUSTRIAL ORGANIZATIONS

UNION YES

HJR 13

Executive Council Members

Lane Kirkland
President
Thomas R. Donahue
Secretary-Treasurer
Frederick O'Neal
Albert Shanker
Edward T. Hanley
Angelo Fosco
Kenneth T. Blaylock
William W. Winpisinger
William H. Wynn
John DeConcini
Wayne E. Glenn
Joyce D. Miller
John J. Sweeney
James E. Hatfield
Barbara Hutchinson
Richard Kilroy
Vincent R. Sombrotto
Gerald W. McEntee
William H. Bywater
Marvin J. Boede
Owen Bieber
[illegible] T. Joyce
[illegible]n R. Williams
Morton Bahr
Larry Dugan Jr.
Robert A. Georgine
Milan Stone
Gene Upshaw
Jay Mazur
Lenore Miller
Jack Sheinkman
John J. Barry
John A. Gannon
Sigurd Lucassen
William J. McCarthy

August 21, 1989

Mr. Patrick Sweeney
Administrator
Division of Workers' Compensation
5 South Last Chance Gulch
Helena, Montana 59601

Dear Administrator Sweeney:

As you may know, the American Association of Railroads and the Amtrak Corporation have been seeking changes in the way in which railroad employees are permitted to recover for disabilities suffered from the job. Railroad employees are presently covered by the Federal Employers' Liability Act (FELA).

A proposal has been offered to exempt Amtrak from FELA and to place its employees under state workers' compensation statutes for a three-year trial period. A number of state workers' compensation directors and commission chairmen received letters from Amtrak last year asking for their views and input on this important question.

Some state workers' compensation officials responded to Amtrak's letter by pointing out a number of problems with the proposal. The AFL-CIO is not aware of a single state commission or accident board that has endorsed or supported it. Yet, these words appear in Amtrak's most recent annual report to the President and to the Congress:

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 10
DATE 3/7/91
BILL NO. HJR 13

815 SIXTEENTH STREET, NW
WASHINGTON, D.C. 20006
(202) 637-5000

NOTE: Union "bug" removed for duplication.

"The proposal also has been favorably received by **many** of the state workers' compensation commissions."[1] (emphasis added)

Senator Robert Kasten introduced an amendment to the Amtrak authorization bill that would have exempted Amtrak from FELA coverage and placed its employees under state workers' compensation statutes. That effort failed in the Senate Committee on Commerce, Science, and Transportation on April 18 of this year.

On August 2, 1989, Senator Kasten reintroduced his Amtrak/FELA amendment and has stated his intention of moving it when the Amtrak authorization bill is taken up by the full Senate sometime after Labor Day. Attached to this letter is a copy of Kasten's proposal.

The AFL-CIO and the unions representing the employees of this nation's railroads are opposed to the Amtrak/Kasten proposal for many reasons. Among them are these:

- FELA promotes railroad safety by protecting not only railroad employees, but passengers and the communities through which trains travel;

- FELA provides more equitable compensation to railroad employees who are disabled or killed on the job than would be available under the inadequate compensation levels that exist in many states;

- There is less litigation and attorney involvement in FELA cases than in most workers' compensation systems.

One of the most disturbing aspects of Amtrak's efforts, aside from the misrepresentation as to its favorable reception by state workers' compensation commissions, is their disregard for the comments they did receive from many administrators. The language of Senator Kasten's "new" amendment does not vary at all from the proposal circulated by Amtrak in its June 1988 letter.

---

[1] See National Railroad Passenger Corporation, 1989 Legislative Report, February 15, 1989, pp.9.

Among the comments Amtrak ignored were these:

- The amendment's application of jurisdiction to the state in which the worker normally reported for duty at the time of a work-related injury or death is very likely to promote jurisdictional disputes that will delay payment of benefits to injured workers and raise the cost of claims through increased litigation.

- This Commission does vehemently object to Federally mandated acceptance of Amtrak into this State's self-insurance program for workers' compensation coverage. The people of the State of **** vested the authority and responsibility for assuring the continued solvency of **** workers' compensation self-insurance system with this Commission and its staff. This Commission considers the proposed Federal Law, specifically Section 1102(d), to be an intrusion into a State's responsibility and, therefore, strongly opposes its passage.

- We have serious reservations about your proposed legislation. The only way we would agree to the expansion of **** Workers' Compensation jurisdiction to cover Amtrak employees is if they were treated in the same manner as other **** employees under our law. Your proposal does not do that.

- ...coverage for Amtrak workers would not be identical to the coverage for other **** employees. It appears that there would be differences with respect to security for compensation, to the benefits provided, and to the question of jurisdiction for a particular injury. If Amtrak is to be subject to **** laws, its workers should have the complete protection of all of **** laws.

- The current benefit structure in **** is significantly lower than the FELA. Placing these employees under **** law would prove to be a hardship on injured employees of AMTRAK. There are injuries covered under FELA that are not covered by ****.

Note: In all cases, **** refers to a state name.

There are, of course, many other specific criticisms that can be made concerning the effort to remove railroad employees from FELA and to place them under workers' compensation coverage.

Amtrak and the American Association of Railroads continue to ignore the opinions of railroad employees and state workers' compensation commissions on this important question. In light of the Kasten amendment, it would be appropriate for state workers' compensation administrators, directors, commissioners, and board members to indicate their concerns and viewpoints on this proposal in communications with their U.S. Senators and House members.

With best wishes,

Sincerely,

James N. Ellenberger
Assistant Director
Department of Occupational
Safety, Health and
Social Security

Enclosure

JNE/cmt
opeiu2
afl-cio

MONTANA JOINT RAIL LABOR LEGISLATIVE COUNCIL

Post Office Box 642
Livingston, Montana 59047

Council Members
James T. Mular, Chairman
Ray R. West, Vice-Chairman
David B. Ditzel, Secty.-Treas.
Carl J. Knutson, Member

29th September 1989

To: Patrick Sweeney, Administrator,
Workers' Compensation Division,
5 South Last Chance Gulch,
Helena, Montana.59620

Subj: U.S. Senator Kastens Amendment - Authorizing AMTRAK participation State IAB planse.

Friend Pat:

The above captioned state rail labor organizations strongly oppose any legislation that would enable the National Rail Passenger Corporation (AMTRAK) to participate in State Workers' Compensation Plans. Senator Kasten will offer an amendment to the Amtrak authorization bill that would enable them to participate in state workers' comp-plans.

This amendment is identical to one offered by him in the last session of congress. The amendment is broad in scope and extends to any railroad employee injured along any right-of-way that Amtrak operates over. As you know Amtrak does not own any railroad right of way - It merely has a contract for trackage rights. ANY railroad employee injure ie: B.N. track people, signal maintainers, freight train employees, who are injured by any Amtrak Passenger train incident would have redress only with Montanas' workmens comp plans.

Another distasteful portion of the amendment allows Amtrak to make claims in any forum they choose, or in the forum where Amtraks' supervisors are located, and not the place where the injury occurred. So a North Dakota based Amtrak employee leaving a terminal is injured in ND the claim would come under Montanas' plan. Because the next down track supervisor is located in Havre. Moreover, if a BN employee was injured due to an Amtrak de-railment etc. The employees claim would be handled under Workers Comp instead of F.E.L.A. Due to the amendments language of "any railroad employee. In this state BN is a rail road and Amtrak is a Rail Lessee operator.

We allege that Amtrak should seek Subrogation legislation from the railroad(s) who maintain and operate the righ-of-way.

Truly yours,

James Mular Chairman

cy: et/al RR Unions Mont.

Brotherhood of Locomotive Engineers

Brotherhood of Maintenance of Way Employees

Transportation - Communications Union

United Transportation Union

Amtrak

NATIONAL RAILROAD PASSENGER CORPORATION
GOVERNMENT AND PUBLIC AFFAIRS

RECEIVED
JUL 07 198
DIVISION OF WORKERS' COMPENSATION

Dear Workers' Compensation Commission:

I recently sent to you a request for your views on a proposal by Amtrak to use state workers' compensation to resolve employee injury claims for a three-year test period. I inadvertently failed to include in some requests a copy of Amtrak's actual legislative proposal. I have attached a copy of the proposal hereto.

I apologize for any inconvenience this may have caused and I look forward to your response.

Sincerely,

David J. Carol

400 North Capitol Street, N.W.
Washington, D.C. 20001
(202) 383-3942

DAVID J. CAROL
Senior Director
Government Affairs

DEPARTMENT OF LABOR & INDUSTRY
DIVISION OF WORKERS' COMPENSATION
TED SCHWINDEN, GOVERNOR
MARGARET "PEG" CONDON BLDG.
5 SO. LAST CHANCE GULCH
STATE OF MONTANA
HELENA, MONTANA 59601

September 13, 1988

Mr. David J. Carol, Senior Director
Government Affairs
NATIONAL RAILROAD PASSENGER CORPORATION
400 North Capitol Street, N.W.
Washington, D.C. 20001

Dear Mr. Carol:

We have reviewed the Amtrack proposal for the Three-Year FELA Exemption that would authorize Amtrack to provide workers' compensation coverage as a self-insured employer under the state laws where Amtrack operates. While we have not had an opportunity to compare injured worker benefits due under FELA and the Montana Workers' Compensation Act I believe a no-fault benefit program would be beneficial to all parties as opposed to the present tort-litigation system. However, the organizations representing Amtrack's employees are in a better position to respond to such changes.

I am concerned that Section 1102, paragraph (d), appears to override state authorization and the statutory requirements necessary to be met before self-insurance is permitted. We feel very strongly that Amtrack should meet the same self-insurance requirements that are required of any firm or organization requesting self-insurance authorization.

Montana's Worker's Compensation Act is designed to provide medical care and protect the income of workers injured in the course of their employment. It is the responsibility of this Division to ensure that injured workers receive benefits as established by law. It is, therefore, essential that the self-insurer has the financial resources necessary to guarantee benefit payment. Compliance with Montana's security and financial condition guidelines insures that funds are available to pay claims.

In previous instances the liabilities of a self-insurer that has failed and claimed bankruptcy have fallen on state resources and thus the citizens of Montana. We cannot expose the resources of Montana to that liability. Therefore, before Amtrack, or any other firm, is allowed to

Mr. David J. Carol, Senior Director
Government Affairs
NATIONAL RAILROAD PASSENGER CORPORATION

self-insure, it must possess adequate resources and provide appropriate security to guarantee future payments for its injured workers.

Enclosed are copies of the guidelines and requirements necessary for self-insured certification in the state of Montana. If you have any questions, please don't hesitate to call.

Sincerely,

ROBERT J. ROBINSON
Administrator

RJR/bac

enclosure

(d) Notwithstanding any requirements contained in the workers' compensation law of any state, including requirements for bonding and licensing, the Corporation shall be deemed qualified to self-insure for workers' compensation coverage under the laws of all states, and no state shall deny workers' compensation benefits to an employee of the Corporation based upon a failure of the Corporation to comply with such qualification requirements.

carry when what's now Montana Rail Link (MRL) was under BN ownership? None. How many do they carry now? A tremendous number. MRL now has opportunities to get new business and that improves the entire rail system. It would have been better if we had been able to make cost and productivity improvements so that we could go after that traffic. But because of the adversarial relationship growing out of the RLA, we weren't able to make those changes and pursue that traffic.

FELA is a different situation. It ought to be changed, not to put injured people under state workers' compensation plans but to set up a new nationwide workers' comp program, negotiated with the unions, at levels that are fitting and appropriate.

RA: This is an alternative not often heard . . .

GRINSTEIN: When I say we ought to take legislative initiatives, that's the kind of initiative I think we ought to take. It's ridiculous that a person injured in one state should get a different award from someone injured in another state. Maybe it works in other businesses, but in my view, all our people work for the same company and we ought to have a different level of award consistent with the needs. And then, of course, you can't justify some of the FELA awards that are being handed down.

Not long ago, I met a fellow who didn't know who I was, and we got to talking and he said he'd just won the BN lottery. And I thought, what in heaven's name have we got going

be more competitive.

It's ridiculous that a person injured in one state should get a different award from someone injured in another state. Maybe it works in other businesses, but in my view, all our people work for the same company and we ought to have a different level of award consistent with the needs.

If shippers react as I think they may, they could have the best of both worlds, with both modes becoming more productive. That's one way of doing it. I don't kid myself, by the way, that Congress is going to do anything in a hurry. And I don't think that Congress believes that railroads are in a critical condition, even though some railroads may be in more jeopardy than anyone might like to believe.

RA: Not so many years ago, BN proclaimed that it was going to be the low-cost carrier. Not much was said about quality. You're talking about changes in the RLA, which go again to the cost factor . . .

GRINSTEIN: I'm not just talking about cost. It's quality that determines your success in the transportation marketplace. Costs have to be competitive. But if quality is not there, you're going to lose.

People Express and Continental Airlines were low-cost carriers. They

and adapt it to railroad needs. That applies to such things as ARES and Automatic Equipment Identification technology. We have adapted technology that's been proven in other industries, while we have also done some work that's original.

We are at a point where we're concerned about the credit markets, where we're concerned about our ability to get returns. Under those circumstances, you have to decide whether you're going to make your investments where you know you're going to get a payoff or whether you're going to spend on things where you don't know whether you're going to get that payoff. That may cause us to retreat somewhat from the level of R&D spending that we have had.

I hope this will not be for a long time. But we have to look at everything we do and try to figure out, is there another way to handle it and would it be cheaper? Or, do we really need that or could we do without it?

I think that as we move through the early '90s where we have some equipment and roadway improvements that have to be made, we may have to delay some R&D programs. I would hope that some of that slack can be picked up by suppliers. We have had excellent joint ventures and partnerships with a number of them, and we want to expand upon those relationships.

RA: What about your projected capital spending for 1991?

GRINSTEIN: At a minimum, spending will be at a level equal to 1990, and that was $537 million. As a matter of

several years. What all this does is to make you look very carefully at your investments. It makes you make choices that you might prefer not to have to make.

I don't think it's really handicapped us in what we're trying to do. We'd like to have done more and taken some chances in the marketplace. We've not had that opportunity in some cases. But we're ahead of the schedule we thought we would be on, in terms of debt reduction, and I think that based upon our stock performance over a substantial period of time – not in that recent fuel crisis period – we're meeting Wall Street's expectations.

RA: You and other top officers I've talked with at BN are obviously not thinking just "now," but also long term for BN. Will Wall Street let you do it?

GRINSTEIN: In an economic environment where there are no junk bonds, where there are much more stringent controls and limitations on easy credit, you are not subjected to the same level of takeover potential – which, for me, is the worry. That's where somebody would come in and try to acquire the company and skim the cream off of it.

I think Wall Street will allow us to do what we're trying to do. I don't think we're under some kind of takeover pressure. Our stock may not be as high a price as it might be if we took a shorter-term view. But great railroads are not made overnight. And we're aiming at being a great railroad.

DONALD R. JUDGE
EXECUTIVE SECRETARY

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P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

TESTIMONY OF DON JUDGE ON HOUSE JOINT RESOLUTION 13 BEFORE THE SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE, MARCH 7, 1991

Mr. Chairman, members of the committee, for the record my name is Don Judge and I'm appearing here today in behalf of the Montana State AFL-CIO in support of House Joint Resolution 13.

We all know, Mr. Chairman, that legislative resolutions don't carry the weight of law. They can, however, send a strong signal to those individuals and law-making bodies whose actions can create laws which impose requirements upon us, that we would oppose certain such actions.

That is the purpose of HJR 13. We want to send a signal to Washington, D.C. that it would be a tragic mistake for them to remove the protections of the Federal Employees Liability Act (FELA) from workers in the railroad industry.

As has been described to you, there is an effort under way to exempt railroad workers from the coverage of FELA and to force state's to accept these workers under the provisions of their individual Workers' Compensation programs. Proponents of this crazy idea would argue that railroad workers and the industry is no different than any others operating in a state. Hogwash!

The FELA program provides incentives for the railroad industry to avoid negligence and to provide safe operations for serving the public. Those of us who live near the Carroll College site of the railroad tank car explosion here in Helena during the last Legislative Session can full well appreciate the necessity of encouraging safe rail operation. In the rail industry, safety means far more to the general public than in most other industries covered under our state's Workers' Compensation program. Incentives for safe operation, therefore, have a much greater meaning.

It's been interesting to watch this industry as it works to pick and choose between state and federal regulation, in order to select the lowest cost, less restrictive environment. One example of this would be the Montana Caboose Law, in which the industry was successful in exempting those trains which pass through the state. They argued that the prerogative to require trains to have cabooses attached was a federal one, and they succeeded, in part, to overturn our law. It's clear that the Carroll College incident would not have happened if a caboose had been attached to that train.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 11
DATE 3/7/91
BILL NO. HJR 13

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The reason that the industry is attempting to remove itself from the coverage of FELA is simple. Workers' benefits are less costly under our state's Workers' Compensation system, therefore, employer taxes are less. And, incentives for safe operation are insignificant under our system as compared to the FELA system.

Workers lives and public safety are far too important to allow such a transfer of responsibility to take place. We urge you to send a signal to Washington, D.C. Say NO to those who would surrender our safety to the worship of profit! Please give HJR 13 a "do pass" recommendation. Thank You.

DATE 3/7/91

COMMITTEE ON Senate Labor

HB's - 232 - 336 - 342 - 356 HJR 13

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Bernie Connor	Connor Masonry	342		X
BRAD KALBERER	BTJ MTL	342		X
Jon Clarke	Mt. Building Trds. Assn.	342	✓	
DAVE RAYMER	LOG STRUCTURES BY RAYMER	342		X
[illegible]	NORTHWEST Rocky Mtn. Const.	342		X
Stuart Whitehead		342		X
Robert D. [illegible]	Ross Const	342	✓	
Jay D Gifford	Gifford Refrig Inc	342		X
ERIK Meis	West Wind Comm Services	342		X
Frank Armbruster	VALLEY PT & GLASS	342	✓	
RICHARD REAM	REAM DESIGN & CONS'T.	342	✓	
Buddy Lundstrum	MALTA Plg + HTG	342		✓
Karen Seyler	Malta Plg + Htg	342		X
Barbara L. Wolfe	Barbara L Wolfe	356		X
Juanita Kajkowski	self	356		X
Dewey Hall	SEIF	336		X
FRED SIMPSON	MONTANA RAIL LINK	HJR13		X
DEWEY HALL	SEIF	356	X	
David A. [illegible]	STEEL BUILDERS	342	X	
Mark Lindley	Lindley Const.	342	X	
Tom Tillo.	ENTERPRISE FLOORING	342	X	
Leonard Cunningham	Alpine Electric	342		X
Jim Caras	Missoula Hospitality Carpenters Cabinet	342	X	
James T. Mular	MONT JT RAIL LABOR LEGIS COUNCIL	HJR-13	X	
John Mason	M.E.I. MFG.	356	X	
David Cuno	Helena Home Builders	342	X	

(Please leave prepared statement with Secretary)

(2)

DATE 3/7/91 (cont'd)

COMMITTEE ON Senate Labor

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
[illegible]	MPEA	332	X	
Peter Funk	Dept. of Justice	332		X
Robert K. Murphy	IBEW	342	X	
Larry E. Klochie	#185 I.B.E.W.	342	X	
Don Judge	MT STATE AFL-CIO	HB342 HB356	X	
" "	" " "	HJR13	X	
" "	" " "	HB 336		X
LARS ERICSON	CARPENTERS	HB342	X	
" "	"	HB312		X
Michael J Sherwood	MTLA	HJR13	X	
Bob Heiser	UFCW	HB336		X
Jacqueline N. Terrell	Am. Insurance Assoc	HB342	X concept	
Laurie Ekanger	Mt Dept of Admin.	HB 356		X
Bob Heiser	UFCW	HB356	X	
Phil Campbell	MEA	HB356	X	
Val Lein	BN	HJR13		X

(Please leave prepared statement with Secretary)